
United States
Circuit Court of Appeals
For the Ninth Circuit

UNITED STATES OF AMERICA,
Appellant,
vs.
SIDNEY T. BURLEYSON,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division.

FILED

JAN 25 1933

PAUL P. O'BRIEN,
CLERK

United States
Circuit Court of Appeals
For the Ninth Circuit

UNITED STATES OF AMERICA,
Appellant,
vs.
SIDNEY T. BURLEYSON,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division.

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Answer	7
Bill of Exceptions	11
Complaint	1
Clerk's Certificate	132
Citation	133
Judgment	9
Order Allowing Appeal	130
Petition for Appeal and Assignment of Errors	127
Praecepte	131
Stipulation and Order re Exhibits	130
Verdict	8
Witnesses for Defendant:	
GEORGE E. CARSON	
Direct	82
Cross	83
Redirect	84
Recross	84
DR. ELOESSER	
Direct	108
Cross	109
Redirect	111
Recross	111

	Index	Page
Witnesses for defendant (cont'd):		
MISS M. GOUGH		
Direct		87
Cross		87
Redirect		88
DR. JOSEPH S. HART		
Direct		112
Cross		116
Redirect		119
DR. EDWIN A. HOBBY		
Direct		101
Cross		105
A. L. LESSMAN		
Direct		88
Cross		89
P. J. MANGIN		
Direct		80
Cross		81
MRS. GEORGIA S. MILLER		
Direct		100
Cross		100
DR. GEORGE J. McCHESNEY		
Direct		75
Cross		78
Redirect		80
F. PARRY		
Direct		99
Cross		99

Index	Page
Witnesses for defendant (cont'd):	
DR. CHARLES E. RAGLE	
Direct	73
Cross	74
E. E. RYDER	
Direct	85
Cross	86
Redirect	87
JOHN STEVENS	
Direct	90
Cross	90
CHARLES E. WALSH	
Direct	71
Cross	72
Witnesses for Plaintiff:	
J. A. BROOKS	
Direct	69
Cross	70
SIDNEY T. BURLEYSON	
Direct	13
Cross	25
Redirect	36
Recross	36
Recalled, Direct	63
DR. WILLIAM COOPER EIDEN- MULLER	
Direct	50
Cross	55
Redirect	58
Recross	59

	Index	Page
Witnesses for plaintiff (cont'd):		
LT. FREDERICK C. KELLY		
Direct	37
Cross	40
Redirect	48
Recross	49
Recalled, Direct	93
Recalled, Cross	97
HARRY A. PESCHON		
Direct	63
G. H. SIMPSON		
Direct	64
Cross	65
F. W. SMITH		
Direct	65
Cross	66

NAMES AND ADDRESSES OF ATTORNEYS.

GEO. J. HATFIELD, U. S. Attorney, A. C. WOLLENBERG, Assistant U. S. Attorney, Post Office Building, San Francisco, California,
Attorneys for Defendant and Appellant.

JOHN L. McNAB, Esq., S. C. WRIGHT, Esq., 1 Montgomery Street, San Francisco, California,
Attorneys for Plaintiff and Appellee.

In the Southern Division of the United States District Court for the Northern District of California, Second Division.

No. 19,029-L

SIDNEY T. BURLEYSON,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT.

The above-named plaintiff complains of the said defendant, and for cause of action alleges:

I.

That at all the times herein mentioned plaintiff was and still is a citizen of the United States of America, and a resident of the City and County of

San Francisco, State and Northern District of California.

II.

That this action is brought under and by virtue of the War Risk Insurance Act and the World War Veterans' Act, and amendments and supplements thereto, and is based upon a term policy or certificate of war risk insurance issued under the provisions of the said War Risk Insurance Act, approved October 6, 1917, and acts amendatory thereto to the plaintiff by the defendant.

III.

That on or about the 30th day of July, 1918, at Paris Island, South Carolina, the plaintiff enlisted in the armed forces of the defendant; that he served defendant as a private of the United States Marine Corps until the 10th day of July, 1919, when he was honorably discharged from the said Marine Corps, and that during all of the said time he was [1]* employed in the active service of the defendant.

IV.

That immediately after enlisting in the defendant's said Marine Corps the plaintiff made application for insurance under the provisions of Article IV of the War Risk Insurance Act of Congress, and the rules and regulations promulgated by the War Risk Insurance Bureau established by said Act of

*Page numbering appearing at the foot of page of original certified Transcript of Record.

Congress in the sum of ten thousand dollars (\$10,000) and that thereafter there was issued to plaintiff by the said Defendant's War Risk Insurance Bureau its certificate No. T..... of his compliance with the War Risk Insurance Act, so as to entitle him and his beneficiaries to the benefits of said Act, and the other Acts of Congress relating thereto, and the rules and regulations promulgated by the War Risk Insurance Bureau, the Veterans' Bureau, and the directors thereof, and that during the term of his service with the said Navy Department as aforesaid, there was deducted from his pay for such services by the defendant through its proper officers the monthly premiums provided for by said Act of Congress, and the rules and regulations promulgated by the War Risk Insurance Bureau, the Veterans' Bureau, and the directors thereof.

V.

That during the month of April, 1919, and while serving the defendant in its said Marine Corps, the plaintiff sustained fallen arches in both of his feet, and which condition later developed into what is known as thrombo engitas obliteration. That said disability has continuously since the date of his discharge from the defendant's Marine Corps rendered and still renders the plaintiff unable to follow his former occupation of salesman, or any substantially gainful occupation; and such disability is of such a nature [2] and founded upon such condi-

tions that plaintiff is informed and believes, and so states the fact to be, will continue throughout the lifetime of the plaintiff in approximately the same degree, or in a worse degree. That ever since his discharge from defendant's Marine Corps plaintiff has been permanently disabled as a result of the injury sustained by plaintiff while in the service of the defendant as aforesaid, and is now wholly and permanently disabled as a direct result therefrom.

VI.

That the plaintiff made application to the defendant through the United States Veterans' Bureau, and the director thereof, and to Veterans' Administration, and to the Administrator thereof, and through the United States Bureau of War Risk Insurance and the monthly payments due under the provisions of said War Risk Insurance Act for total and permanent disability, and that said United States Veterans' Bureau, and the director thereof, and the Veterans' Administration, and the Administrator thereof, and the said Bureau of War Risk Insurance, and the directors thereof have refused and still refuse to pay to plaintiff the amount provided for by the War Risk Insurance Act, and the amendments thereto; and on June 11, 1931 disputed the claim of plaintiff to the benefits of the said War Risk Insurance Act, and have refused to grant plaintiff said benefits, or any thereof and have disagreed with him in writing concerning his rights to the insurance benefits of said Act ever

since said 11th day of June, 1931; and on July 10, 1931 the Administrator of the Veterans' Administration in writing notified plaintiff that the action or finding of the Administrator that the plaintiff was not suffering from any disability which rendered plaintiff unable continuously to pursue a substantially [3] gainful occupation and complained of by plaintiff and appealed from was affirmed.

VII.

That under the provisions of the War Risk Insurance Act, and the other Acts of Congress amendatory thereto, plaintiff is entitled to the payment of \$57.50 for each and every month transpiring since the date of his discharge from the said defendant's Marine Corps, to wit: July 10, 1919, and continuously thereafter so long as he lives, and continues to be permanently and totally disabled.

VIII.

That plaintiff has employed the services of John L. McNab, an attorney and counsellor at law, duly admitted to practice before this court, and all courts in the State of California, That a reasonable attorney's fee to be allowed to plaintiff's attorney for his services is ten per centum (10%) of the amount of insurance sued upon and involved in this action payable at a rate not to exceed one-tenth (1/10) of each of such payments until paid in the manner provided by Section 500 of the World War Veterans' Act of 1924.

WHEREOF, plaintiff prays judgment as follows:

First. That plaintiff since the 10 day of July, 1919, has been, and still is, totally and permanently disabled as a result of an illness and/or injury contracted in the line of his duty while in the active service of the United States of America.

Second. That plaintiff have judgment against the defendant for all of the monthly installments of \$57.50 per month for each and every month from said 10th day of July, 1919, and so long as he lives and remains permanently and totally disabled. [4]

Third. Determining and allowing to plaintiff's attorney a reasonable attorney's fee in the amount of ten per centum (10%) of the amount of insurance sued upon and involved in this action, payable at a rate not exceeding one-tenth (1/10) of each of such payments, until paid in the manner provided by Section 500 of the World War Veterans' Act of 1924; and such other and further relief as may be just and equitable in the premises.

JOHN L. McNAB,
S. C. WRIGHT,
Attorneys for Plaintiff.

United States of America,
Northern District of California,
City and County of San Francisco.—ss.

Sidney T. Burleyson, being first duly sworn, deposes and says: That he is the plaintiff named in

the above-entitled action; that he has read the foregoing complaint, and knows the contents thereof; that the same is true of his own knowledge; except as to those matters which are therein stated upon his information and belief, and as to such matters he believes it to be true.

SIDNEY T. BURLEYSON.

Subscribed and sworn to before me this 1st day of August, 1929.

[Seal]

LAURA E. HUGHES,

Notary Public for the City and County of
San Francisco, State of California.

My commission will expire May 16, 1933.

[Endorsed]: Filed Aug. 5, 1931. [5]



[Title of Court and Cause.]

ANSWER TO COMPLAINT.

The United States of America for answer to the complaint of plaintiff herein denies each and all of the allegations thereof.

WHEREFORE, defendant prays that plaintiff take nothing by his said action and that defendant have its costs herein incurred.

GEO. J. HATFIELD,

United States Attorney.

Service of the within answer to complaint by copy admitted this 4th day of Sept., 1931.

JNO. L. McNAB,
Attorney for Plaintiff.

[Endorsed]: Filed Sep. 4, 1931. [6]

[Title of Court and Cause.]

VERDICT.

We, the jury in the above entitled case, find in favor of the plaintiff, Sidney T. Burleyson, and fix the date of his total and permanent disability from following continuously any substantially gainful occupation from July 10, 1919.

ELDRED C. ABEL,
Foreman.

[Endorsed]: Filed Feb. 4, 1932. [7]

In the Southern Division of the District Court of
the United States, for the Northern District
of California.

No. 19,029-L.

SIDNEY T. BURLEYSON,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

JUDGMENT.

This cause came on regularly for trial before the
above named court, Hon. Harold Louderback, judge
presiding, on the 2nd day of February, 1932 at the
hour of 10 o'clock A. M.

John L. McNab and S. C. Wright appearing as
counsel for the plaintiff, and George J. Hatfield,
United States Attorney, and A. C. Wollenberg, As-
sistant United States Attorney for the Northern
District of California, appearing as counsel for the
defendant.

A jury of twelve persons was duly and regularly
impaneled and sworn to try said cause. Witnesses
on the part of plaintiff and defendant were sworn
and examined, and documentary evidence on behalf
of the plaintiff and defendant was introduced; and
after hearing the evidence, the arguments of counsel
and the instructions of the court, the jury retired
to consider their verdict, and subsequently returned

into court their verdict in words and figures as follows, to wit:

“We, the jury in the above entitled cause, find for the plaintiff, Sidney T. Burleyson, and fix the date of his total and permanent disability from following continuously any gainful occupation from July 10th, 1919.

February 4th, 1932.

E. C. ABLE,
Foreman.” [8]

And the court having fixed plaintiff's attorneys' fees in the amount of ten per centum (10%) of the amount of insurance sued upon and involved in this action.

IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff, Sidney T. Burleyson, do have and recover of the United States of America the sum of eight thousand six hundred and seventy and 84/100 dollars (\$8,670.84), as accrued monthly installments of insurance at the rate of fifty-seven and 50/100 dollars (\$57.50) per month, beginning July 10th, 1919.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the defendant, United States of America, deduct ten per centum (10%) of the amount of insurance sued upon and involved in this action and pay the same to John L. McNab and S. C. Wright, plaintiff's attorneys for their services rendered before this court, payable at the rate of one-tenth (1/10) of

all back payments, and one-tenth (1/10) of all future payments which may hereafter become due on account of said insurance, said amounts to be paid by the United States Veterans' Bureau to said John L. McNab and S. C. Wright out of any payments to be made to Sidney T. Burleyson, or his beneficiary in the event of his death before two hundred and forty (240) of said monthly installments have been paid.

Judgment entered February 4th, 1932.

WALTER D. MALING,
Clerk.

O. K. as to form only
Geo. J. Hatfield,
by A. C. W. [9]

[Title of Court and Cause.]

DEFENDANT'S ENGROSSED BILL OF
EXCEPTIONS.

To the plaintiff above-named and to John L. McNab, attorney for plaintiff:

You, and each of you, will please take notice that the attached constitutes defendant's engrossed bill of exceptions.

GEO. J. HATFIELD,
United States Attorney, Attorney for Defendant.
[10]

[Title of Court and Cause.]

ENGROSSED BILL OF EXCEPTIONS.

BE IT REMEMBERED that on the 2nd day of February, 1932, the above entitled cause came on for trial; Messrs. John L. McNab and S. C. Wright, Attorneys, appearing for the plaintiff, and Messrs. Geo. J. Hatfield, United States Attorney for the Northern District of California, and A. C. Wollenberg, Assistant United States Attorney for said district, appearing for defendant; a jury was impaneled and sworn and thereupon the following proceedings took place:

“Mr. McNAB.—If your Honor please, during the course of the opening statement, there was some controversy over why the case was reversed, revolving around the discussion of a disagreement with the Bureau, and I have here the written disagreement of the Veterans Administration Bureau which I think the United States Attorney will admit——

Mr. WOLLENBERG.—Yes, I will stipulate to the disagreement.

The COURT.—Of course, he has stipulated that that fact is proved. Do you wish to use it?

Mr. McNAB.—In view of the admission, if your Honor please, the notification is of date of July 10th, 1931, and has to do with his disability. I will offer it in evidence but will not ask it [11] to be read at the present moment.

The COURT.—It will be received as plaintiff's Exhibit No. 1 in evidence."

(Exhibit No. 1 attached hereto.)

TESTIMONY OF SIDNEY T. BURLEYSON.

Sidney T. Burleyson, the plaintiff, called in his own behalf, being first duly sworn, testified as follows:

My name is Sidney Theo Burleyson. I live near Belan, Mississippi, and am thirty-two years old at present. I enlisted in the armed service of the United States in Memphis, Tennessee, in the United States Marine Corps, at the age of eighteen. Outside of about three weeks or a month up to that time I had always been on a farm near Belan, Mississippi. I had no particular training except on the farm, where I farmed and spent my life. I had gone to the tenth grade in school. I had no training in any particular pursuit in life except I had three weeks occupation as a clerk in a drygoods store, a wholesale drygoods store in Memphis. After my enlistment I went to Paris Island, South Carolina, where I had training. From there I went to Quantico, Virginia. I was ill in Quantico with influenza. I left Quantico for Vladivostok with the Marines. Prior to my departure I had been ill for about six weeks. The hospitals were all filled and I was in a temporary hospital in the barracks for

(Testimony of Sidney T. Burleyson.)

about a month and then in convalescent camp about two weeks. A short while after I left convalescent camp I embarked for Vladivostok. The first port on the Pacific we touched was San Diego, the next Honolulu. Before we arrived in Honolulu my throat was sore all the time and I coughed. About the second day after I arrived at Honolulu, and while I was on board ship I was stricken with appendicitis. They took me [12] to Pearl Harbor and I had an operation for appendicitis with a general anaesthesia. I was in the hospital about twenty-three days before I was discharged. They took my tonsils out also before I was discharged. I had not been removed from my cot at the time my tonsils were extracted by a local anaesthesia. After the removal of my tonsils I was discharged from the hospital in four or five days. They sent me to the barracks on light duty. They had me moving some cans around in the morning, and cleaning up around the building. I actually found the work heavy. In a few days after that I was ordered for duty—heavy duty, I mean drilling, heavy duty. After I commenced drilling I had a terrible pain in my legs from my knee down into the calf of my leg, in both legs. It was a terrible pain, went into my feet and my arches fell and began to swell up. The arches crushed down. Prior to that time there had been a normal arch in my feet. The sole of my foot started to turn red. They were flat and broken down. The arch flattened out. After about a week,

(Testimony of Sidney T. Burleyson.)

I guess, it finally quit. About a week elapsed between the falling of the arch until it was flat. During that time I was drilling. After that time I was sent to the hospital at Pearl Harbor Navy Hospital. I had a terrible pain in my legs and feet up into the calf of the leg to below the knee. It didn't bother me much above the knee, just below. I remained in the hospital about six weeks. During that time they treated me with hot salts or something like that—epsom salts. At the expiration of that time they held a medical survey. About three or four surgeons attended the survey which was held in the Islands.

(Plaintiff's Exhibits 2 and 3 attached hereto.)

[13]

I made no application for any certificate, had nothing to do with it. They said I wasn't fit for further duty and I was sent to Mare Island and discharged. I had never made any application for a discharge or any other kind of release. I was just ordered discharged by the surgeons. When I came back to Mare Island my feet and limbs turned a reddish color up to my ankle and it was terrific painful. No further examination was given to me at Mare Island, they just called me up and made me sign a waiver. I haven't my formal discharge. I think it was in evidence at the former trial.

(Military record and order of discharge admitted and read into evidence as Plaintiff's Exhibits 2 and 3 respectively.)

(Testimony of Sidney T. Burleyson.)

About three days before I was discharged two petty officers brought around the waiver. I asked what it was and one of them, holding his hand over the writing, said "Never mind, just sign." I wouldn't sign it and he went and got the commander and he told me to sign it, so I signed it. That is what is known as a waiver. I could only see part of it and I waived all claim for compensation and hospitalization. I understood when I signed it that I had no more claims. They made me sign it.

Mr. McNAB.—Q. Wasn't there a time when you discovered that that waiver wasn't a bar to your rights?

The COURT.—That is what he believed to be a waiver.

Mr. McNAB.—Yes.

A. In 1925, at Taft, California, I was then sick. I talked to a veteran and he said "Why don't you write in? I think you can get that all straightened out." I wrote to the Los Angeles office of the Veterans Bureau in January of 1925 and asked for treatment and compensation but I never received a reply to it. I figured they had looked it up and seen— [14] well, they didn't answer my letter.

Mr. McNAB.—Q. Did you keep a copy of the letter which you wrote?

A. Yes, I did.

Q. I show you what purports to be a letter dated the 11th day of January, 1925, from Taft,

(Testimony of Sidney T. Burleyson.)

California, and ask you if that is a carbon copy of the letter that you wrote at that time?

A. Yes, sir, it is.

Q. To that letter did you ever receive a reply?

A. No, sir, I didn't.

Q. Or the year 1925, or at any time prior to October 2, 1928.

A. No, sir.

Q. I show you a letter from the United States Veterans Bureau from San Francisco October 2, 1928, and ask you whether or not that was the first time you ever heard from that letter?

A. Yes, sir.

Mr. McNAB.—I offer this in evidence.

The COURT.—In other words, you want to present both letters?

Mr. McNAB.—Yes.

The COURT.—I will allow it. Both will be received as one exhibit. They will be received as Plaintiff's Exhibit 4.

(Plaintiff's Exhibit No. 4 attached hereto.)

The WITNESS.—Although the letter of October, 1928, refers to a letter written to me from the Los Angeles Bureau, I never received such a letter nor did I receive any blanks or anything like that from them. (Information blank of the United States Marine Corps received in evidence by stipulation and marked Plaintiff's Exhibit No. 5 and read.)

(Plaintiff's Exhibit No. 5 attached hereto.)

(Testimony of Sidney T. Burleyson.)

I did not have flat feet prior to my enlistment. I was a well man prior to my enlistment into the Marine Corps. (Reading of Exhibit No. 5 continued.) At the time of my enlistment I knew of no physical defects that I had. I had never suffered from fallen arches or flat feet or with a case of pains and I was conscious of no physical defect in any way. I was a well man. I had spent my life on a farm. At the time of my discharge I was afflicted as I am now. It has developed since that time until now I can not get around very much. It is worse now. As regards the pain, it was almost the same as it is now. The pain first started in the leg and went down to the feet. My arches and toes showed discolor, very red, later on turned bluish color and swelled up. The skin had abscesses form that came open in the toes, pus ran out of them and the skin cracked. I used hot salt water on them until I learned later to elevate my feet as much as I could.

I have endeavored to work since my discharge. The first time I ever went into the Bureau was in 1926 and they granted my application, and up until that time I didn't believe I had the right to go there for treatment. I had no source of income upon which to rely. I took medical treatment from time to time. I had to work in order to live. I first endeavored to work at Mare Island, clerical work. I was given a rating of rivet heater. I did no riveting work. I worked less than two weeks

(Testimony of Sidney T. Burleyson.)

around the yard and then was transferred to the office. Worked there a short while, less than two weeks, and then I worked around the yard, and then I was transferred into the office. I first had to go as a machinist; they got me a rating as a [16] machinist's helper. They afterwards put me as storeman. I went to work about two weeks after my discharge and was there about a year. I rested a good deal. I took care of the serial numbers on gasoline and kerosene drums, that was my chief work. Most of the time I had to go around the yard looking them up. It made my feet swell up and look terribly bad. I did not undergo medical treatment at the Island. I thought if I went there they would let me out. I used the hot salt water and stayed home whenever I could. The Navy doctor at Pearl Harbor told me to keep my feet elevated as much as I could. Whenever I wasn't carrying on my duty at Mare Island I took care of my feet, putting them in salt water or keeping them elevated. During the time I was at Mare Island I was never free from the pain. I was off duty part of the time. Mr. Coats, the chief clerk there, let me off to go home. I always went to bed, laid on the bed and rested. I eventually left the island because it got so bad. I had to run around the docks so much that I left. I left for no other reason than that I was unable to carry on the work and went to Boyd's Hot Springs and took two weeks of mineral hot baths. I was able to be off

(Testimony of Sidney T. Burleyson.)

my feet and it relieved me a little bit, but when I went back to work it was the same thing again. I was off about a month and paid my way at Boyd's Springs out of my earnings. I attempted to get work at the Southern Pacific. The swelling went down in my feet and when I came to town it started up again.

No examination was made of my feet when I went with the Southern Pacific. I did not disclose to them the fact that I was suffering with bad feet. I was afraid I couldn't get a job if I did. I got a job as a cashier, sitting most of the time, at Tracy. I worked there two weeks and got pretty bad but it was only a temporary job. When I got back [17] to town I took about two weeks off, laid around the hotel taking treatments. I had no pains during this time. I used the hot water and salt and elevated my feet and got relief in that way. There was no time during this period that I was free from the pain and my feet were swollen. Then the Southern Pacific sent me to Yuma, Arizona, as a clerk, mostly sitting. I worked about eight months I think. I was not free from pain while I was there. I worked because I had no other way to live. I did not feel able to work. I got very bad and the heat seemed to affect me too and make me worse. I came back to California because I felt I would get relief again. I laid around town a while and then went over to Oakland and got work at the Merritt Hotel as a night clerk. During

(Testimony of Sidney T. Burleyson.)

that work I got a couple of chairs when there was no one around and I would sit and rest and hold my feet up. I went to some physicians but I don't remember who now. No physicians ever gave me relief from my pain and I was feeling pretty bad, so I laid off quite a few months, I think half a year. There has never been a time since I left Honolulu that I could stand on my feet without severe pain. When I stand for any length of time, either with or without crutches, my lower limbs get a bluish color. At the present time I am at Letterman General Hospital. I have been there seven weeks. I have been confined to bed there and this is the first time I have been out of bed. I didn't get up until nine o'clock to come here. This is the first time in seven weeks I have been anywhere other than Letterman Hospital. The effect of coming down today has made my feet swell up and turn blue. They bother me always.

Q. Now at the time you had your examination, before you were discharged from the hospital at Honolulu, [18] to your knowledge, was any pulse taken of the circulation in your ankle?

A. They never took it until I went to Letterman Hospital.

Q. You mean recently?

A. No, before; I was there some time ago, a few years ago.

Since my discharge I have learned that I could go to Letterman Hospital. I have been at Palo

(Testimony of Sidney T. Burleyson.)

Alto twice and Letterman. The first time I went to Veterans' Bureau Hospital at Palo Alto it was in 1928 for eight or nine months. Most of the time in bed. They gave me hot and cold water treatments and violet ray lights and then put a cast on my foot, a plaster cast. I have never been able to get on my feet since the plaster cast was on. It got so bad that in the middle of the night I asked one of the boys to get a knife. I was going to take it off myself. I called a nurse and the officer of the day but he was out so I told the boys to get me water and a knife. They asked what for and I said "Never mind." They called a doctor and he gave me a shot in the arm and the next morning took the cast off. I got some relief after it was taken off. I got worse after being at the Palo Alto Hospital. I came to San Francisco for a few days and then went to Letterman General Hospital and remained there five months. I went back the second time to Palo Alto hospital for about six or seven weeks one time. As a result of all these treatments in the hospital there has been no improvement. The doctors have told me the diagnosis of the disease. While I was in the hospitals at Letterman I took some serum in the arm and hot and cold water, keeping my feet elevated a good part of the day. Yes, the doctors have informed me of the diagnosis of the disease. [19]

The various employments I have entered into have been for the purpose of earning money for

(Testimony of Sidney T. Burleyson.)

my treatment. I have had private physicians from time to time. Dr. Eidenmuller has been familiar with my case for about five years and I paid him myself out of my earnings. I consulted Dr. Moody at Taft and Dr. Cheny. I worked for a time at a hotel at Tahoe and there consulted Dr. Guy Wallace. There has been no place that I have worked that I have not been under the care of a physician. There has been no time since my discharge that I have ever been relieved of pain. I was employed for a while at the Hotel Worth in the capacity of night clerk. The duties called for me to move around very little—when nobody was in and I wasn't working I kept my feet elevated. I always put a chair, after twelve o'clock it was very seldom that anybody comes in. I worked from eleven at night to seven in the morning. I lived at the Hotel Herald. I did not perform services at the Hotel Herald. I was at Lake Tahoe Tavern four or five months under the care of Dr. Wallace, the house physician. I did not disclose to any of them that I was suffering from this affliction. I could have got treatment if it went on the record but I would probably be discharged so it was called chronic. Dr. Wallace told me, being a mighty fine man, that he would put it down chronic, because I might be discharged. I was trying to get employment and trying to hold it. I have never been able to hold any position for any length of time. There is nothing I know of or have known of for years past that I

(Testimony of Sidney T. Burleyson.)

can turn my hand to and employ myself at steadily. I know of no occupation that I was able to be employed at except temporarily. I have never left any position for any other reason except by trouble.

Q. You have never been discharged? [20]

A. No sir.

Q. In the last four or five years have you done any work?

A. No sir.

Q. These last four or five years have been taken up how?

A. In hospital and with doctors' treatments outside.

Q. Doctor; independent physicians outside. They were paid by whom?

A. By myself.

Q. Paid by yourself. Do you know of any gainful occupation whatsoever that you might be able to turn your hand to now in order to make a living?

A. No, sir.

If I had any, I would be willing to try it. I was actually at the Lake Tahoe Tavern about three months. While there I was under the care of Dr. Guy Wallace. I was also employed at Del Monte. At Del Monte my feet got terribly bad so Mr. Matthew, Assistant Manager, came to me and said "What is the trouble, you hobble along?" I said "My feet." He said "I have a pair of slippers upstairs, I will bring them down." That was a day or

(Testimony of Sidney T. Burleyson.)

two before I quit. The last few days there I was in bed.

There has been over four years now since I have been able to wear shoes. Customarily when I am out of bed I usually wear heavy woolen socks and slippers. The left foot is the worst. I can detect no pulsation at all in the left foot. That has been the case with the left foot about four years. With the right foot I am told there is a little pulsation inside, none on top. It is farther down. In an effort to perfect myself for any position, any work, for a [21] while I attended Heald's Business College, went to night school four months I guess. I paid my own tuition out of my earnings.

Cross-examination of Sidney T. Burleyson
by Mr. Wollenberg.

Between the time of my letter to the Veterans Bureau dated January 11, 1925, and the letter I received from the Veterans Bureau dated October 2, 1928, I had nothing to do with the Veterans Bureau nor did I hear from them. I wasn't near them. I figured it was no use after I signed the waiver. I did file a claim for compensation with the Veterans Bureau on December 14, 1926. And I wrote a letter to Los Angeles and I never did get an answer from it. It is here. I did contact the Bureau personally on that date and filed a claim and I had a physical examination at that time made by the Veterans Bureau and I was in contact with

(Testimony of Sidney T. Burleyson.)

the Veterans Bureau about my condition from that time in 1926 on. I can identify that document as the claim which I filed with the Veterans Bureau on December 14, 1926. It is entitled "Application of Veteran Disabled in the World War for Compensation and Vocational Training." I was asking for compensation and medical attention and advice.

Immediately after my discharge I went to work at Mare Island. I don't know the exact number of days but it may be two or three weeks after, I don't recall now. I was discharged on July 10, 1919. I am not sure of the date I was discharged. I remained at Mare Island as an employe of the government about a year, taking serial numbers of drums, kerosene drums, turpentine, etc. I handled cards at the U. S. California, time cards and things like that.

Q. You were employed there in a purely clerical [22] capacity?

A. I went on the ship for a little while, but they arranged it so it was as when I started at the beginning; just a few days.

Q. Do you remember the title of your position there for the most part, other than those few days that you worked as a riveter?

A. Handling cards.

Q. What were you, a clerk of some sort.

A. They held it rated as a riveter, but I was checking time cards down along the ship where the men were working.

(Testimony of Sidney T. Burleyson.)

Q. How long were you there continuously?

A. Thirteen or fourteen days.

I was there thirteen or fourteen days. Then I was in a clerical position at the oil house, I think it was, where I worked until I left.

Mr. Wollenberg. Q. How long did you work in this other capacity at the oil house?

A. Until the time I left.

Q. Well, other than the few days you worked in the clerical position keeping time cards, and the time you worked as a riveter and machinist's helper, which you say was a short time, the rest of the year was spent at clerical work at the oil house, is that correct?

A. Yes sir.

I said I left because my legs bothered me and my feet were so bad I went to Sutter's Hot Springs for treatment. I resigned to go up there.

A. I was there on my vacation.

Q. On your vacation? Then did you return to Mare Island? [23]

A. No, I didn't work any more there.

Q. Now were you a civil service employee at that time, of the Government?

A. Yes, the last job.

It was not a fact that I left that employ because someone in priority in civil service rating was entitled to the job. They didn't let me out, I resigned. The records will show my resignation. There was no question of civil service priority in 1921. I

(Testimony of Sidney T. Burleyson.)

wrote out a formal letter and sent it in when I resigned, about August 20, I don't recall the exact date; I resigned of my own accord. At the time of that employment I had a physical examination. They just went over our hearts and lungs and things like that. It wasn't much of an examination. They didn't look at my feet at all.

Q. Did they make any report in connection with that examination? Do you recall whether they made any report in connection with your feet?

A. No.

Q. You don't recall them questioning you about your feet at all?

A. No, sir, they didn't.

I don't recall whether they made any report in connection with my feet nor questioning me about my feet, and I said nothing about my feet because I didn't want them to know about them.

My next employment was with the Southern Pacific Company as cashier in the dining-car, hotel and restaurant division. I was there about thirteen days. I don't know the exact date. It was about August 25, 1920. I don't recall the date. My average wage at Mare Island was about \$120. a month. I think it averaged that over the year. My [24] best recollection is that I was at Tracy about two weeks. I received the salary of \$105. a month. It included found. I roomed at the Southern Pacific rooming-house. That was included and my board was included. I took the position at Tracy

(Testimony of Sidney T. Burleyson.)

as a temporary position to fill until someone else came back. I was there thirteen days, and then came back to San Francisco and Mr. Wright wanted to send me to Indio in the Imperial Valley. I wanted to lay off. When I came back in two weeks they sent me to Yuma, Arizona. That was to be a permanent position. I worked at Imley, Nevada, also. That was after I went to Yuma. I was in Yuma seven or eight months. At Yuma my wage was \$115. and room. It was clerical work. We used to buy supplies for the diners, specialties, etc. When I left Yuma I came to San Francisco. I left the Company. It was some time in 1921 and I didn't go back to the Company until a year afterwards. Before I went to work for the Southern Pacific Company I had to pass a physical examination. They looked over my heart. They didn't look over my feet though. I went to the doctor for the examination. There was no mention made at all of my feet in that examination. They didn't ask me anything about my feet. After I came back from Yuma I went to work at the Merritt Hotel about six weeks afterward. I think it was in May or June but I don't recall, during the summer of the year, about May, 1921. Five or six weeks after that I went to work at the Merritt Hotel, I don't know the date. I was at the Merritt Hotel eight or nine weeks, I guess, around two months. At the Merritt Hotel I was paid \$75.00 a month and room and board.

(Testimony of Sidney T. Burleyson.)

When I left the Merritt Hotel I didn't go to work, I laid off a number of months. I don't think I did anything until I went to Del Monte in the early part of 1922, April [25] or May, I don't know the date. I don't remember whether or not I did any other work from the time I left Yuma until I went to work at the Del Monte except the Merritt Hotel work. I could have gotten a job during that time but I wasn't feeling good.

Q. You could have got one; had you been looking for one?

A. No, I didn't want to go on when I knew I would have to quit in a few days.

I didn't want a job. I worked at Del Monte about two months, in the storeroom, store clerk and other jobs. I don't remember what I got at Del Monte, I think it would be \$70. and found. Found includes room and board. From Del Monte I came back to San Francisco and went to work again for the Southern Pacific Company. They didn't examine me physically when I came back to the Southern Pacific Company because I had not been out but a year. I believe that this was in July or August of 1922. They put me to work at Tracy again and I worked there until October of 1922. I then came back to San Francisco. The second employment at Tracy lasted about two and a half months or three months, something like that. Then I went to work for the Southern Pacific at Imlay, Nevada. I went there in November of 1922 and stayed until April or May of 1923. My salary there

(Testimony of Sidney T. Burleyson.)

was \$90. and found. I was cashier at the hotel. After leaving there I went to Bowie, Arizona, for the Southern Pacific Company doing the same thing. While I was working for the Southern Pacific Company I was not known as a temporary cashier. Each time I moved they transferred me because someone else came back. It was sort of permanent position. They would transfer me by wire. I would be at Yuma or another place for seven or eight months and then they would [26] transfer me. I was always subject to transfer when someone else came to relieve me. The whole department of the Southern Pacific is run that way. I don't know whether other cashiers were sent around the same way, but my experience is that we always went from place to place as we were ordered.

I was at Bowie, Arizona, for forty days I think and then came back to San Francisco. Then they sent me to Indio, California, in the same service in the same position as cashier. Each time I went from one job to another it was by wire sent me from the headquarters of the dining-car service in San Francisco. I was in Indio for three months. After that I resigned. It was around August of 1923. I don't remember the exact date, it was so long ago.

While I worked for the Southern Pacific Company the wage was always around \$100. a month and found, some of the positions paid more than others. Sometimes it wasn't that much. At Indio

(Testimony of Sidney T. Burleyson.)

it would average about \$90. a month, plus board and room. Some of the positions had no board and room and some no board, but room. I think at Bowie I received \$90. a month and room and board. I resigned from the Southern Pacific about September of 1923 at Indio, came back to San Francisco and laid off for quite a while, I don't know how long, but several weeks. I don't remember whether it could have been two weeks.

I went to work for the Emporium in San Francisco for five or six months. It was around May of 1924. I received \$85. a month as a receiving clerk. In May of 1924 I left the Emporium and went to work at the Fox Hotel in Taft. I worked there about nineteen months as hotel clerk at a salary of \$125. a month. I didn't receive room or board at Taft. I worked there until about June of 1926. I don't [27] remember any other work that I have done up to June of 1926. That is all I can remember. Up to that time I had seen a number of private doctors about my feet. I saw two doctors in Taft when I was there. I saw a number of doctors in 1926, one in Oakland. I don't remember his name. When I came in from Yuma, when I left the Southern Pacific the first time, I went to Los Angeles and saw an orthopedic. He made me a special pair of arches but I couldn't wear them. That was when I came from the desert I saw him. I don't remember his name. I just saw him in Los Angeles on my way through. The doctor at Taft

(Testimony of Sidney T. Burleyson.)

was Dr. Moody and I saw another doctor there. I don't remember his name. I had flat feet at that time. I have had that condition ever since my discharge. I didn't tell any of the doctors who had examined me for any of my jobs, nor did any of them notice my feet. Had I told them, I wouldn't have had a chance to get work. They would have disqualified me. The doctors at Mare Island just looked me over and passed me on my heart and lungs. A navy doctor made the examination there. He told me when I left the Marine Corps what I was to do and how I was to take care of myself. A navy doctor directed me as to what to do when I was discharged from the Mare Island Hospital and one of the doctors at the Mare Island Hospital examined me within a week or so after my discharge. I don't know the exact date, and he said nothing about my feet. From that time down to June of 1926 I don't recall the names of any doctors who examined me except Dr. Moody of Taft. I didn't get receipts from them, I always paid. After I left the hotel at Taft I went to work at the Tahoe Tavern as clerk. I think it was in [28] July of 1926, immediately after I left Taft, about the 20th of July, it could have been July 17, 1926. I was there about three months. When I left there the season was closed down and I was laid off for a little while and they sent me to the Whitcomb Hotel at San Francisco.

(Testimony of Sidney T. Burleyson.)

Q. When you left Tahoe Tavern isn't it a fact that the season was closed and the hotel closed down?

A. They sent me to the Whitcomb Hotel. I laid off for a little while and then came down.

Q. Did you say you left Tahoe Tavern because you couldn't stand the work any more, and resigned?

A. No, it was closed, but they sent me to another place to work. It was the same chain of hotels.

I laid off for about two weeks before I went to work at the other place and went to work at the Hotel Whitcomb. At Tahoe Tavern I received the salary of \$125. a month and found, which includes room and board, and then went to work at the Hotel Whitcomb where I received \$90. a month and meals. I worked there for about five weeks. It was a regular job and I am sure of that. I don't remember the exact date but it was about five weeks after that I left, about December of 1926, between the 3rd and 6th I think.

I was next employed at the Hotel Granada as a hotel clerk. I was there a little over two months I think, at \$75. a month and found. Found includes room and board. I left the Granada after two months and went to work at the Hotel Worth, where I worked a little over a year at a salary [29] of \$125., no room and no board. That would bring us down to August of 1928. I was in the hospital

(Testimony of Sidney T. Burleyson.)

in July of 1928. I was off quite a few days during 1928, let someone else work in my place and I paid them myself. It was about July of 1928 I left the Hotel Worth and went to the hospital at Palo Alto.

After my discharge from the hospital at Palo Alto I came home for about two or three weeks and then went to Letterman General Hospital and since that time on I have done no work. There was a period in 1924 when I attended Heald's Business College. It was about four or five months and I went there at night during the time I was working at the Emporium. Quite a few times I was not regular in my attendance, I didn't go. It has been four years since I have earned anything. I have no income at the present time.

During the time I was in the service at Quantico, Virginia, I got sick but I went back to duty shortly afterwards. My estimate of the time I was in the hospital at Pearl Harbor in connection with my appendicitis about twenty-two or twenty-three days. A few weeks after my discharge from the hospital at Pearl Harbor my arches dropped. I went to light duty for a while and when I returned to heavy duty the trouble developed. I don't recall the number of days that it took my arches to drop from normal. I guess it was about four or five or six days.

(Testimony of Sidney T. Burleyson.)

Redirect Examination.

by Mr. McNab.

When I was sick and took these various employments I did not feel physically able to work. I had to live. I had no other sources of income but my labor. When I laid off these various positions I treated myself. I was never discharged from any of them. When I left the naval service at [30] Mare Island, a naval surgeon gave me instructions as to what to do in the matter of caring for myself. None of them ever advised me that I could be cured. There have been a number of physicians and surgeons that I have consulted over the course of years. I never kept track or kept any statement, I just went to their offices. I remember two doctors at Taft, one in Los Angeles and one at Lake Tahoe, and Dr. Eidenmuller. I don't recall the names, and there was one in Oakland in 1921. Notwithstanding the advice and treatment they gave me, I got no relief.

Recross Examination

by Mr. Wollenberg.

I testified that I had no other income over this period of time other than the money brought in by my own labor.

TESTIMONY OF
LIEUTENANT FREDERICK C. KELLY,

called for the plaintiff and sworn:

I have the rank of lieutenant in the military service and I am a regular physician and surgeon, receiving my training at Rochester University, Wisconsin. I have been in the government service since November 12, 1929. My first hospital was a small one situated in Northern Michigan. From there I was ordered to the army medical school at Washington, D. C., from there to the Medical Field School at Carlyle, Pennsylvania, and from there to Letterman General Hospital, San Francisco, where I have been since June 12. I am in the general medical section there and know the plaintiff in this case, Mr. Sidney Burleyson. He came under my observation first on January 7, 1932. From that date down to the present he has been under my constant observation. I had diagnosed the case as thrombo angiitis obliterans. It is a rather rare [31] disease. I myself have contributed a medical treatise on this particular subject. I have written monographs for the medical profession on this disease with which he is afflicted. The disease is best known or described by the name thrombo angiitis obliterans; thrombo means "clot"; angiitis means "inflammation of a blood vessel," and obliterans means "obliteration." Of its cause, nothing definite is known. There are many conjectures but nothing has been proven by workers on the subject. In the blood vessels themselves the first thing that happens is the

(Testimony of Lieutenant Frederick C. Kelly.)

thickening of the inner lining of the blood vessel; the next thing is a laying down of a soft clot in the blood vessel. Following that, this clot is gone. By that we mean that there is scar tissue and active tissue as well comes into the clot, and the clot goes on to gradually and eventually cause obliteration of the blood vessel. One of the usual concomitants is much pain. There is usually two types of pain, one type of pain is that which is brought on by exercise relieved by rest, the other is present when there is rest and is present at all times.

I have had an opportunity to observe Mr. Burleyson during this period of time. He seemed to be suffering constant pain. It is a progressive disease, from the mild form to a more severe. As time goes on it becomes progressively worse. There is nothing known to the medical or surgical profession which will result in complete cure. Something can be done for improvement but not for cure. I can not say whether or not he will ever be better than he is at present. I don't believe he will obtain relief without surgery. Ultimately, without some relief, this congestion in the blood vessels will result in gangrene, and gangrene must be eliminated by amputation. That is a thing that will always be considered in this case. To avoid amputation you have to [32] undergo a long period of hospitalization with intensive treatment. I am not familiar with the statute which prescribes total and permanent disability. Having in mind the defini-

(Testimony of Lieutenant Frederick C. Kelly.)

tion to be “Any impairment of mind or body which renders it impossible for the disabled person to follow continuously any substantially gainful occupation,” my opinion is that the plaintiff is permanently disabled and has been at all times since he has been under by observation.

Mr. McNAB.—Q. Lieutenant Kelly, are you familiar with the statute which prescribed permanent and total disability, as not being able to continuously pursue a gainful occupation?

A. I am not familiar with it, no, sir.

Mr. McNAB.—I will read it to you from the definition, as defined in the statute, “any impairment of mind or body which renders it impossible for the disabled person to follow continuous any substantially gainful occupation.” Now doctor, having that in mind, is this plaintiff permanently disabled within the definition I have read to you?

A. He is.

Q. And has he been or has he not been at all times since he has been under your observation?

A. He has.

Q. Doctor, it has been testified here by the plaintiff—ever since your observation of him at Letterman Hospital, you have had occasion to familiarize yourself with the history of the patient, including an operation for appendicitis, and a subsequent operation for the removal of the tonsils, and a subsequent falling of the arches, and other trouble—

(Testimony of Lieutenant Frederick C. Kelly.)

The COURT.—In other words, did you hear the [33] testimony of the witness today?

A. Yes.

Mr. McNAB.—That is correct. You have listened to the testimony of Mr. Burleyson while he has been on the stand?

A. Yes sir.

Q. State whether or not the symptoms to which he testified during the period that he was in the Government service, are, in your opinion, indicative of the existence of the disease which you have just testified to?

A. It is perfectly possible for them to be.

Q. Are the symptoms at the present time anything more than the likely development of those symptoms; in other words, it is a progressive trouble?

A. It is a progressive condition.

The COURT.—Q. From the statement made by plaintiff, if you accept his statement to be true, do you feel that he was totally and permanently disabled at the time of his discharge from the service?

A. I believe he was, yes sir.

Cross-examination
by Mr. Wollenberg.

When I gave my opinion regarding permanent disability I had the definition in mind as stated to me. I heard all the testimony of the plaintiff in this

(Testimony of Lieutenant Frederick C. Kelly.)

case and I heard the work record of this man from 1919 to 1928, a period of nine years, my history.

Q. How do you reconcile that work record with this history in your mind?

A. It does not conform to the definition. It was not a continuous work record.

Q. You are therefore going on the basis as to [34] whether the man was continuously at work; basing your opinion entirely upon that statement are you, and the question of the definition?

A. What do you mean, reframe the question.

Q. You are basing your statement of total and permanent disability as your opinion entirely upon the question of the continuity of the work?

A. No, sir, I did not. I am passing it upon the man's physical condition in accordance with that definition.

The COURT.—Well, doctor, the circumstance is this, I presume, that you feel that if he has stated correctly to you his condition and as to the time, that he was unfit to follow any employment; you don't say he couldn't have done the work indicated, but you think in doing so he was impairing his health; in other words, a man might have consumption and still continue at a task, although in doing the work he is shortening his life, is that your idea? He was hurting himself when he did that work?

A. Yes sir.

(Testimony of Lieutenant Frederick C. Kelly.)

Mr. WOLLENBERG.—Q. What authorities on this particular disease agree with you in your opinion as to the line of work the man can perform, suffering from this illness.

A. Well, I again give you three authorities in the Mayo clinic who state that part of their treatment is absolute rest in bed. They are Dr. Allan Bean, Dr. Mahoney, of the Mayo clinic.

Q. Are you familiar with Dr. Leo Buerger's treatment; this disease is sometimes known as Buerger's disease?

A. It is.

Q. Named after Dr. Leo Buerger of Los Angeles, and New York, whose name has—well, you might say they have [35] called this specific illness or disease after him, is that correct?

A. He is the first one to give a comprehensive report of it, although it was described long ago before his description of it.

Q. And from his report it has taken his name to a certain extent?

A. Yes.

Q. The common name would be Buerger's disease?

A. Yes.

Q. Does Dr. Buerger agree with you on your statement of the industrial side of the case?

A. I don't know.

Q. Doctor, you stated also that the symptoms indicated here this morning were the symptoms

(Testimony of Lieutenant Frederick C. Kelly.)
of this disease; will you enumerate those symptoms that you consider the primary symptoms of Buerger's disease or thrombo angiitis obliterans.

A. The symptomology.

Q. Yes, as enumerated by the plaintiff.

A. The first thing the plaintiff complained of was pain in his leg, the greater portion of the time, in the calf of the leg. He notices that this is brought on by exercise and gradually becomes worse. An individual will be able to walk five miles in the incipency of the thing, but as time progresses he may only be able to take fifty paces before it comes on. This gives us a chain of causation. The next thing he notes is his feet are cold the majority of the time. He notices that when his feet are on the floor they become red, or reddish blue. He notices that when he elevates them they become pale and pallid and the doctor also notices that there is very noticeable diminutions of normal palpation of the feet.

Q. That diminution of absence of pulsation of the [36] blood vessels of the feet, that is a very important thing, I mean relative to the diagnosis of the disease?

A. Yes sir.

Q. If it was shown in October of 1928 from an examination of Doctors George J. McChesney and Dr. Leo Eloesser, that upon examination of this man they found a pulse in his feet, and their report stated that there was no diminution of the pulse,

(Testimony of Lieutenant Frederick C. Kelly.)
you would still be of your opinion that thromboangiitis obliterans existed in 1918 and 1919, at the time of his discharge?

A. It was not my contention it existed. I said it was possible, perfectly possible for it to exist.

Q. You said the man was totally and permanently disabled at that time?

The COURT.—No, the point is this. He is taking into consideration what the plaintiff says. If you remember the statement of someone else, that is only a statement.

Mr. WOLLENBERG.—Q. Doctor, you stated in your opinion that the man was totally and permanently disabled in 1918, or 1919 at the time of his discharge from the Marine Corps?

A. I don't know whether I testified that he was permanently disabled in 1918.

Q. Well, I don't know whether you did in 1918, but you did at the time of his discharge, which is my recollection of that, and the time of his discharge was July, 1919.

The COURT.—He so testified, but he said he would have to take the statement of the plaintiff as to the facts as given on the witness stand.

Mr. WOLLENBERG.—Q. Did you express your opinion that he was permanently and totally disabled at that time, did you? [37]

A. Yes.

Q. And would you now express your opinion that he was permanently and totally disabled in July of 1919?

(Testimony of Lieutenant Frederick C. Kelly.)

A. I couldn't tell you that.

Q. Would you say that he was totally and permanently disabled in February of 1920?

A. I would not be any more familiar with the facts in 1918 than in 1920.

Q. So you wouldn't say that he was totally disabled in 1920?

Mr. McNAB.—I submit that that is not proper cross-examination because the question was based upon the testimony of the plaintiff himself.

The COURT.—What do you mean by that? Do you mean that without taking it as true, what the plaintiff testified to, that you wouldn't be able to do it otherwise?

A. May I ask a question?

The COURT.—In other words, in view of the statement of the plaintiff at the present time, and your finding as to his condition, what existed in him, you are not able to place your finger on the time of its beginning, when he was totally and permanently disabled, are you?

A. That is correct.

Q. However, you received the history from the man himself?

A. Yes.

Q. And in this case if you accept the history as given on the witness stand as true, if that history is true, in connection with your own observation, do you feel that he was permanently and totally dis-

(Testimony of Lieutenant Frederick C. Kelly.)
abled at the time he was discharged; you do, don't you?

A. Yes sir. [38]

Q. Is that correct?

A. Yes sir.

Q. Combining the two?

A. Yes.

Q. And as I understand, in answer to Mr. Wollenberg you said, that if you didn't have his history, then you wouldn't know?

A. That is true.

Q. That is what you are testifying to?

A. Yes.

Q. That is what I understood you to say?

A. Yes.

MR. WOLLENBERG.—Q. Now even taking that history, doctor, isn't it logical for you to assume that he was totally and permanently disabled for the first time in 1927 or 1928?

A. No, I don't think so.

Q. Doctor, what weight did you give in the history to the fact that he had—Mr. McNab mentioned a tonsillectomy and an appendicitis operation; had they any connection with it?

A. Bearing on the condition?

Q. On the condition.

A. None.

Q. No; doctor, you stated that this is a progressive disease, that is correct, isn't it?

A. It is, yes.

(Testimony of Lieutenant Frederick C. Kelly.)

Q. Now a man who has the disease in the first early stages may have a period of remission in which the pain isn't it as great, or intensive, or entirely gone?

A. That is possible.

Q. Now isn't it usual that there are periods of [39] remission?

A. No, I wouldn't say that it is the usual course of the disease, but no two cases of the disease manifest themselves alike, to the exact point.

The usual ages that individuals suffer from the disease are between twenty-five and fifty-five and it attacks suddenly. It is immediately disabling and invariably progressive, and progresses over a period of from ten to twenty years. There may be periods when the disease only manifests itself by an attack on the skin although scars on the skin are usually an indication of an advanced state of the disease not an early state. It is possible to have dermatitis in any skin that is malnourished in the blood.

Q. What is the progress of the present condition, the disease that Mr. Burleyson has, since you have observed him; you have stated that it is progressive, but what degree is it?

A. I will say moderately severe. I would say it is in a moderate state now. The disease may run a course of from five to fifteen years. I did not make a statement to Mr. McNab's question that amputation is perhaps the only thing that medical

(Testimony of Lieutenant Frederick C. Kelly.)

science has in view in this case. That statement is incorrect.

The COURT.—When they had gangrene—the only remedy where there is gangrene?

Mr. WOLLENBERG.—Q. And is that the invariable course in this disease?

A. Untreated, yes.

Mr. Burleyson has been treated at Letterman, according to the hospital records, from March 29, 1929 to June 27, and with no improvement. No I would not say that in view of the treatment Mr. Burleyson has been receiving, gangrene and amputation are the inevitable thing in his case. In comparison with treatment in former years, amputa-
[40] tion is very remote and under the treatment in present days there is practically no amputation whatever. In my opinion, based on an assumption that the symptoms were Buerger's disease, I would say that a man is not permanently and totally disabled from the inception of the disease. I don't know when the inception of Mr. Burleyson's disease occurred. I have no data to go on as to whether or not Mr. Burleyson had the disease prior to the time he went into the service.

Redirect Examination
by Mr. McNab.

I am unable to detect any pulse in Mr. Burleyson's left extremity. Circulation there from the heart has been interrupted. He has pulse in one

(Testimony of Lieutenant Frederick C. Kelly.)

of the vessels, diminished. In the right extremity in the main vessel it can be felt intermittently but not all of the time, not a steady flow. It would not be possible to diagnose this disease without a test of the pulse. The break in the skin bursting and the continuation of exudes of pus would indicate that the disease was probably very advanced and was caused by trophic lesion, malnutrition. It would indicate a fairly well advanced stage of the disease. He will have to undergo treatment in order to keep himself stationary as he now is at the present time, for the rest of his life. He may undergo the cutting off of certain nerve centers and obtain relief but not a cure. I do not believe his limbs will ever be any better than they are at present. Any kind of work that entails the use of the lower limbs would aggravate the trouble or at least retard possible recovery. Work entailing the use of the legs is detrimental to his health.

Recross Examination

by Mr. Wollenberg. [41]

When I described the pulse, I am referring to my personal examination of him. I took his pulse on January 8 of this year. I know nothing at all of his pulse in 1928 or 1919. I know nothing of the pulse condition between 1919 and January of 1932 personally, but I know what it was in 1929 from the records at Letterman Hospital. I do not know

(Testimony of Lieutenant Frederick C. Kelly.)
anything prior to his first admission into Letterman
Hospital.

TESTIMONY OF

DR. WILLIAM COOPER EIDENMULLER,

called on behalf of plaintiff and sworn.

(By Mr. McNab.)

I am a physician and surgeon practicing in this city. I received my medical training at the University of California. I have been practicing in San Francisco a little over twenty-five years.

Sidney Burleyson first came under my observation in the early part of 1927 and has continued under my observation down to this date. The first time I became acquainted with him I called at the Hotel Worth, 641 Post Street, when I was attending professionally a case for the hotel. I observed him many times. Every evening he would be back of the counter reclining in one chair with his feet and legs up on another, sometimes wrapped in a blanket. His limbs would be up and he would have thick woolen stocking and slippers on. Periodically since that time he has been under my observation and care. I made a diagnosis of the disease with which he is afflicted and determined it to be thrombo angiitis obliterans, otherwise known as Buerger's disease. I will describe this disease as follows: all the parts of our body live by virtue of

(Testimony of Dr. William Cooper Eidenmuller.)

the fact that they get a certain amount of nutrition that is carried to the various parts of the body through the arteries, in the form of nutriment and water and oxygen. The vessels that carry the pure blood to [42] the legs, in this case, in a case of this kind—they became more or less obstructed. Mr. Burleyson at times, when his feet have been depending too long, became reddish and bluish, owing to the fact that his blood is getting into the arteries and can not get back through the veins. Now we know that if, over a long period of time it is determined that blood can get into the feet and lower extremities when depending, and not get out, that means that there is more or less obstruction in the veins; the blood gets in but not back. Now from study or observation, when his feet and legs are on the horizontal, or up above the horizontal, the feet and legs get white, and they stay so, and the normal color doesn't return as long as they are in that position. When that occurs, time after time, it means that there is some organic physical obstruction to the flow of the arterial blood into the arteries that feed the legs. In that case the blood ran out of the legs when the legs are horizontal or above, and can not run in through the arteries, which means that there is, when it occurs, time and time again, after repeated examinations, that there is a definite physical organic obstruction in the arteries. So in Mr. Burleyson's case, on repeated

(Testimony of Dr. William Cooper Eidenmuller.)

examinations, I satisfied myself that there was an organic obstruction to the flow of blood in the outer arteries and veins to both legs, and owing to the fact that when the legs are depending that the blood can not get out, and, when the legs are raised, the blood can not get in, and owing to the fact that in normal feet and legs, we should ordinarily feel three arterial pulses in each foot and each leg, but in the case of Mr. Burleyson, I have never been able at one time to feel more than one pulse in either leg, in all the examinations I have made of him since 1927, and in my more recent examinations I have not been able to feel any pulse in the left leg, and very poor pulse in the right leg just below the ankle; those findings along with the [43] history that if there is a certain limited amount of exercise that cramp-like pains are induced, and weakness in the leg develops, that causes him to cease walking and sit down, and cease standing, those are the main points that caused me to diagnose his case as thrombo angiitis obliterans. There was evidence of organic obstruction of the arteries and veins of the legs and a great diminution of the arterial pulse in each leg; an absence in the left and almost a complete absence in the right, along with a history of pain on raising them too long, when the feet are white, elevated to the horizontal or above, and when he exercises even a very limited amount he gets pain, those symptoms are characteristic signs of

(Testimony of Dr. William Cooper Eidenmuller.)

thrombo angiitis obliterans and nothing else in medicine, if you can rule out heart disease and kidney disease, conditions which might give swelling and pain and dropsy—if you rule out those conditions, as I have, why the diagnosis of thrombo angiitis obliterans can stand and must stand unqualified. It is a comparatively rare disease among human beings. There is no known treatment or cure for it. Standing on the feet for a prolonged time produces weakness and pain which causes the patient to cease standing on his feet and cease walking. For a certain limited time there is an improvement over his previous posture if he had been lying or sitting down. It helps for a while. The change in posture limits the circulation for a time and for that reason it is beneficial, in fact the postural exercises that Dr. Buerger recommends are carried on with the idea of temporarily increasing the amount of blood in the collateral surfaces with the idea of producing a better function. In this condition, where the legs are involved, standing for a long period of time makes them become pink and red and cramps appear in the legs and he would have to recline and elevate his legs and soak them in hot [44] water. It is a progressive disease. In the normal course it progresses beyond the point where it is and may continue that way, but in that event it would mean continued life of mental suffering and physical disability. On the other hand

(Testimony of Dr. William Cooper Eidenmuller.)

there might come a time not far off, or further off, I hope, when it does come, when nature will not be able to supply enough blood through the collateral vessels for the feet and legs to live, in which event they will die, and when those parts die suddenly—we speak of that as gangrene, and when that takes place—when the limbs are alive they must have nutrition to live on, but such a condition as this can extend and continue, but if it reaches this stage and results in general infection, amputation, of course, in such instances is required. Up to several years ago from seventy-five to eighty-five per cent, roughly, came to amputation in from five to fifteen years, but modern lines of treatment have been able to prolong the incident of such an ending.

In my opinion, Mr. Burleyson's case as it stands today is about twelve years old. I am not able to state at this time whether amputation will be necessary or not in his case but it is my opinion, from my observation of the case from the spring of 1927 and continuing on during each year up to January 11, 1932, noting the progress and the conditions during these years, that amputation will probably become necessary at some future time. It has become progressively worse over this period of time and in the majority of cases it progresses and becomes worse. There is no cure known either to medical or surgical science. I have familiarized myself with the history of the case and the symp-

(Testimony of Dr. William Cooper Eidenmuller.)

toms from the beginning, as related to me by the plaintiff, and I am familiar with the discharge from the naval service. In my opinion he was afflicted with the disease [45] while he was still in the service of the United States. I know the definition of permanent and total disability as stated in the Veterans Statute, and in my opinion, from the history of the case as I have learned it, he was permanently and totally disabled during the time he was in the naval forces of the United States and up to the present time, and he was totally and permanently disabled before he was discharged and has continued so up to the present time.

Cross-examination

by Mr. Wollenberg.

In my opinion he was totally and permanently disabled, for the best interests of his limbs and his life, under the definition, during the time that he earned \$100 a month and found, at Tracy, from the Southern Pacific and also during the time that he continued in the work at Mare Island when he first came out of the service in 1919 and 1920, that is from the standpoint of his best interests and his life, he was totally and permanently disabled, and that would be my answer for the entire period of time up to 1926, over all the period of his employment. I do not believe that he wouldn't be in the condition that he is today if he had not worked, but

(Testimony of Dr. William Cooper Eidenmuller.)

I believe that he was running a risk of jeopardizing his limbs and his life by work at any time. I can not say that if he had taken proper treatment he would be in different shape than he is now but he was taking a risk that wouldn't be advisable and no medical advisor should have advised him to work since his discharge. I do not know from my experience whether he would be in a different condition today. I have an opinion in my mind as to when the disease of thrombo angiitis obliterans actually commenced in this case, but of course it is only relative and only a degree. The more we go into these things the more we realize [46] how little we know, but still going as far as we humanly can, I am willing to state that in my opinion the trouble began from the time, or after the time he was discharged from the government in 1919, after having had two operations, the tonsillectomy and appendicitis, and having had influenza. The only weight I can give the appendicitis operation is from a chronological standpoint. He gave me a history that a few days, perhaps weeks, after being discharged from the government hospital for influenza, for tonsilitis and for appendicitis and following an operation for removal of his tonsils and appendix, he was first put to doing light work, which wasn't so light, as he said, then he was returned to heavy duty, regular duty, drilling, etc. Shortly after that his legs started swelling from the knees down, that

(Testimony of Dr. William Cooper Eidenmuller.)

is the swelling, and his arches here and his ankles. He had severe pain in his limbs. The swelling was growing and the swelling was so great he couldn't see his ankles at times. I believe he became disabled at that time. Now I take it that those symptoms, so far as we are able to tell in this case, were the beginning symptoms and signs of this thrombo angiitis obliterans. I did not give any particular weight to the tonsil operation except that conditions arose shortly after the infections and those operations, just a chronological connection. I have no ways of weighing it, and nobody has, of directly connecting up the thrombo angiitis obliterans with any infection or operation.

I have taken the life history of Mr. Burleyson and in my opinion the first part of the history can be connected up with the condition, and I therefore think that it commenced about that time. I therefore believe that the thrombo angiitis obliterans commenced about the time of the appen- [47] dicitis and I have so testified. I have spoken about the percentages of amputations in cases of this kind. They are the old percentages but our present day opinion is still in the molding. It is possible, with our further advanced knowledge today, that more physicians have become thrombo angiitis obliterans minded and we are discovering our cases earlier, and for that reason they naturally would have an entirely different course to run, but we can not

(Testimony of Dr. William Cooper Eidenmuller.)

attribute too much to our modern intensive treatment, time alone will tell. Our treatments haven't been going on long enough to say that amputations **are not the thing**. The treatment has only been carried on for the last five or ten years. I have no recollection of the case in 1920 except from the history. I believe that the condition was sufficiently advanced for him to be totally physically disabled.

Redirect Examination

by Mr. McNab.

Even if amputation should not prove necessary, we are doing things that we think and hope might improve his present condition, but there is no guarantee that they will. I do not think that he will ever recover the use of his limbs. The work he has done may have aggravated the condition and it might not have. I do know the work that he did during 1927 when under my observation was against my advice. I advised against it on general principles. Of course at that time he had thropic lesions, two gangrenous ulcers of his toes. He had fallen several times and the blood supply in his limbs was so little that he fell down several times. Thropic lesions is a small degree of gangrene. If the ulcer had been bursted, the leg would have gone into gangrene. The falling was caused apparently by the blood supply. I have examined him before and after these falls at [48] several times and I

(Testimony of Dr. William Cooper Eidenmuller.)
advised him to take sunshine and fresh air. Those things are considered beneficial for the health. He was working nights and sleeping days. When he went to Heald's he said he was all right, and the first thing he knew he was on his feet, and when he was home he was inside on his feet, but there was no other condition in his body that I could find to attribute it to, and I came to the conclusion that the blood supply in his limbs had been cut off and there was nothing to hold him up and he collapsed as a paralytic would. There is a lack of blood. There is a minimum of blood required to function and when your limbs get below that limit, your legs give out, as in paralysis. I don't know where he was or discharged from what hospital that indicates these things to me, but he was in the hospital for six weeks, sometime before he was discharged, while still in the forces.

Recross Examination
by Mr. Wollenberg.

All I have are these notes, or history, that I have taken in the case. You may see them. These do not consist of my notes of the life history of this patient. I haven't all of my notes at this time. The original notes have been gone over and from them I have made a synopsis, but these represent all I have. I can not tell when I made this memorandum. I couldn't say whether it was in 1927.

(Testimony of Dr. William Cooper Eidenmuller.)

There is no date on it. This page is a copy of my ledger sheet recently taken out of the ledger, which is to acquaint myself with the chief dates. There is nothing on either that shows my statement of the history of the case and my diagnosis. It just shows some of the dates I saw him and the charges marked against it. This sheet shows symptoms that I found from time to time. These are some questions I asked [49] him in relation to the case and the answers that I recorded—"causes of the disease," "racial, Hebrew, over forty," "tobacco, most important factor. Syphilis. Alcohol." I did not find that Mr. Burleyson was racially a Hebrew over forty. I went into the question of races, life history, family, former use of alcohol, tobacco, exposure to cold, where he lived, and race. He told me during the time that I knew him, and that I observed him, that he had been smoking cigars. I considered all the important things. He didn't give a history or have sufficient attributes to have any effect on the case. The history, as far as alcohol was concerned, was very moderate. As to syphilis, several Wassermans were taken in the service and all were negative. I examined him and found no evidence of syphilis. I examined him to find evidence of gonorrhoea. I did not find an "unstable hyper-sensitive nervous system." I did not find that his mode and place of living had anything to do with his condition. I learned from him that his

(Testimony of Dr. William Cooper Eidenmuller.)
earlier life at home on the farm was a healthy life. Of course the climate was occasionally extreme. There were some physical hardships connected with his former life during service in the government which might have some mental or physical hardships connected with it. I have testified that he developed thrombo angiitis obliterans while in the service.

Q. Yes, but I am talking about your notes here in connection with that, under those various designations that I have been reading to you.

A. I understand. There is nothing that I know of, that he did in the government service at all. Long exposure to the cold is a condition and factor and cause. In his early life he was subject to considerable cold, according to the history given to me, this was on the farm in the winter time, but it didn't seem to me to be remarkable enough to be [50] connected with the condition. I did find something of outside causes, but as to underlying fundamental causes, I can describe nothing remarkable. This letter dated November 21, 1931, addressed to Attorney John McNab, states that a re-examination was made on September 24 and November 21, 1931, based on previous findings, and is a report to Mr. McNab in connection with the case. I don't know whether or not it is a general discussion of the disease. It states that this is a progressive disease and that another disease like it is Raynaud's

(Testimony of Dr. William Cooper Eidenmuller.)
disease. I was trying to explain to Mr. McNab why I believed it was emphatically thrombo angiitis obliterans. I took the pulse of the feet in this case. I would have been skeptical in making a diagnosis if I found all the pulses normal, but in this case I have only been able to find a poor weak pulse in the left foot and at times I didn't find any in the right foot and lower leg. I thought I felt a fair pulse on one occasion. Each leg has three arterial fronts and that would give three pulses, but in Mr. Burleyson's foot at times I haven't been able to find any, and at other times I have been able to find one weak pulse, in the right foot more often I have thought I felt one really weak pulse out of the three pulses. 1927 is the first time I examined Mr. Burleyson. This was the first time that I was called to his house. I examined him earlier than that. I called to see him, I was calling at the hotel at that time treating a guest and their employes. At that time I happened to be treating an employe at the hotel who had Raynaud's disease and for that reason Mr. Burleyson's case had a great interest for me, but that man has since lost both of his legs because of that disease, and because of that disease in contacting the two diseases I went deeply into Mr. Burleyson's case.

SIDNEY T. BURLEYSON,

recalled on behalf of plaintiff.

Examination

by Mr. McNab. [51]

After my discharge I continued to pay premiums on my war risk insurance policy for about seven months after my discharge. (Stipulated that the policy of war risk insurance was in force until March 1, 1920.)

By stipulation the testimony of

HARRY A. PESCHON,

a witness at a former trial, was read on behalf of the plaintiff.

I am a police officer connected with the detective bureau in the city, in the identification bureau. I know the plaintiff, Mr. Burleyson. I saw him in Ward 4 at the Diagnostic Center of the Base Hospital at Palo Alto. I knew him to be there during the time that I was there, from the first week in January of this year to the middle of February. He was still an occupant of the hospital at the time I left; he was a bed patient. I don't know just what the doctors were doing with him, but I do know that both of his legs were in a plaster cast the entire time with the exception of the last week that I was there. He was in a surgical bed so that part of his body could be raised and his feet were

(Testimony of Harry A. Peschon.)

elevated. They were both in a plaster cast. He did not say that he was in pain but he stayed right in bed all the time that I was there.

Mr. WOLLENBERG.—This is cross-examination:

He did not tell me what he was there for or what he was being treated for.

By stipulation the testimony of

G. H. SIMPSON,

a witness on behalf of the plaintiff, was read.

I am an engineer, railroad construction. I know the plaintiff Sidney Burleyson; I have known him for two and a half or three years. When I first knew him, he was night clerk at the Hotel Worth. I had occasion to observe him while he was attending to his duties there; it was during the night time. He kept off his feet as much as he could. He [52] served from eleven at night until seven in the morning. During that period of time there were very few people coming and going. I did not observe his general condition with regard to his ability to get around at first, but I did so later on. I noticed he had difficulty in walking around. At that time he was not using crutches. He seemed to walk as if his feet hurt him. He did not impress me as a man who was able to carry on any continuous work.

(Testimony of G. H. Simpson.)

Cross-examination
by Mr. Wollenberg.

I have not any idea how many hours a night he would work on that job. I was not working with him. I came in early in the morning and noticed him sitting in a chair with his feet propped up. I found out later the cause of it; it was due to trouble with his feet. I noticed that his arches had fallen. I looked at his feet. He had on a pair of Oxfords. From the appearance down here (illustrating) it looked as though the arches had fallen. I presume he was on the job about a year. I know he was on from eleven at night to seven in the morning. So far as I know he performed no work during the day time.

By stipulation the testimony of

F. W. SMITH,

a witness called on behalf of plaintiff, was read.

I am proprietor of the Herald Hotel. Part of the time for the last eighteen months off and on Mr. Burleyson lived at my hotel. During that time I gave him no employment whatever. During the time that he has been at the hotel I have had occasion to observe his condition. When he first came to the hotel, I think about May of last year, he was having trouble with his feet and was using a cane, and

(Testimony of F. W. Smith.)

after he was there about two months he went down to the Palo Alto Veterans' Hospital. I know of my own knowledge that he had [53] gone to the base hospital at Palo Alto. His condition was much worse when he returned. My recollection is that he came back to the city after about 25 days or so, and then he went to the hospital again and stayed down there for some considerable time, I think. I don't remember the exact date, but four or five months; and when he came back he was much worse; he was on crutches. We naturally noticed that when he came back he was around the hotel and could hardly walk; he just used these crutches. He could not hold one position very long; we never said anything to him, but he would sit down for about half an hour, and then he would get up and walk some place else, or go to his room, but he seemed to be much worse when he came back from the hospital. During the time that I observed him he was not performing any labor of any kind whatever. He did not during any of the time he was there perform any labor, or do anything other than care for himself.

Cross-examination
by Mr. Wollenberg.

He was a roomer at my hotel. He first came there in May of last year and stayed until some time in July, and then went to the hospital for, I think about twenty days or so, and then he came back and

(Testimony of F. W. Smith.)

stayed for a short time, and then went down to Palo Alto and stayed down there I think four or five months, and then came back to the hotel for a short time and went out to the Letterman Hospital. I was in touch with Mr. Burleyson while he was in the hospital; I was forwarding mail to him and telephoning him. I met him for the first time in May of last year, I think.

(Physical examination report of Sidney Burleyson conducted by Major Mariella of the Letterman Hospital, bearing date March 29, 1929, also diagnosis of Dr. M. T. Maynard of the Veterans Bureau, which was admitted by the court and read in evidence, attached hereto.) [54]

DR. MARIELLA'S REPORT OF PHYSICAL EXAMINATION OF PLAINTIFF.

“June 15, 1929.

Physical examination of this patient shows the following: Tonsils are out; throat in good condition. Teeth in good shape. No adenopathy; no arterio-sclerosis. Thyroid negative. No hernia, varicocele or varicose veins. Slight atrophy right testicle following mumps in 1917. Skin clear and healthy except for a few pigmented moles. Pupils equal, regular and react normally, no tremor; abdominal, cremasteric, and plantar reflexes normal;

deep reflexes normal. Heart, lungs and abdomen negative. Blood pressure 126 over 90. Radial and brachial pulses (pulsation) is good and the hands are warm and moist. The feet are cold and the legs are cool up to the knees, more marked on the left. The feet show a rather marked cyanosis in the dependent position, the discoloration grading off to the mid leg; upon elevation of the leg pallor is noted about one and one-half minutes. Posterior tibial pulse is present, but definitely weak, bilateral. The dorsalis pedis pulse is absent bilaterally. There is a third degree flat feet bilateral. No atrophic changes are noted at this time. There is no history of a previous phlebitis. Slight oedema of the feet and ankles is present and there is a history of such oedema for several years back. This patient has had pain in his feet and ankles for the past eight or ten years. This has been attributed to the marked pes planus, but it wasn't until some time later that the symptoms of circulatory disturbance became noticeable: actually he dates the coldness and color changes of the feet and legs back to a little over a year ago. He has never noted claudication, but has been on his feet very little for the past two years. He states that there is a dull ache [55] present at times in the legs, but nothing severe. Has never used tobacco excessively, but still continues to use it moderately in spite of advice to the contrary. I saw this patient about the middle of April, 1929, and at that time diagnosed him as a case of

thrombo angiitis obliterans; I am still of the same opinion. He has been in hospitals now for two and a half months and has received all the usual procedure for Buerger's disease (contrast baths, postural exercises, rest, typhoid vaccine intravenously, physio-therapy, protection of the extremities from cold, and so forth). Only slight improvement has resulted. He is desirous of leaving the hospital for a time and states that he can continue the contrast baths and exercises at his home. Under the circumstances would recommend his discharge as a hospital maximum, hospital benefit case, with the understanding that he is to report to some hospital later for continuation of the other forms of treatment. No treatment for the pes planus is indicated at this time in view of the circulatory disturbance. All foci of infection present have been removed. I. N. Mariella." [56]

Mr. McNAB.—We rest.

By stipulation the testimony of

J. A. BROOKS,

a witness on behalf of the plaintiff, was read.

I am a cigar clerk. I live at 154 Ellis Street. I know the plaintiff, Sidney Burleyson, and have known him for about seven years. I have had occasion to observe his habits, they are regular; he does not use anything that would disturb his sys-

(Testimony of J. A. Brooks.)

tem. I have had occasion to observe the development of his trouble. He seems to suffer pain; he is getting worse, I believe. I have seen him before and after his visits to the various hospitals which have been described here. Before his visits to the hospitals at Letterman and Palo Alto. After his return from those hospitals there did not seem to be any improvement in his condition. He seems to suffer pain. During the time I have observed him he seems to be taking the best of care of himself, resting all that he could. I believe it has been about a year and a half since he has been engaged in any form of labor. Prior to that time he was never continuously employed at anything, to my knowledge.

Mr. WOLLENBERG.—This is cross-examination.

I reside in San Francisco and I have during the seven years that I have known Mr. Burleyson. I believe that during all of those seven years except the last he has been working outside of San Francisco. During the time he was working outside of San Francisco I did not see him at all.

TESTIMONY OF CHARLES E. WALSH,

called on behalf of defendant.

I am Recorder of the Labor Board and have charge of [57] all the reports of labor at Mare Island. As such I have the original records appertaining to Sidney Burleyson with me and also a photostatic copy of them. He was employed under the rating of rivet heater until August 1, 1919. Then he took his discharge at his own request and was immediately employed as a machinist's helper under the rating of machinist helper, August 1, 1919. Under the rating of rivet heater he was paid \$4.20 per day. I can not say what his duties were under that rating but he worked under the rating. Here is a photostatic copy of the muster roll. It only indicates the rating. On August 1, 1919, he went to work under the rating of machinist's helper. He was discharged December 2 of the same year at his own request and then immediately was employed as a clerk on the same day. He took his discharge on June 24, 1920; this was a temporary appointment and the temporary appointment expired June 24, 1920. At this time a regular appointee came through the civil service and Burleyson's term expired. The regular appointee appeared. He had to make way for the regular appointee. That is what the records show. On June 24, 1920, he was employed as a storeman, temporarily. He resigned from that position August 19, 1920. His pay at that time was \$3.84 per day

(Testimony of Dr. Charles Ragle.)

as storeman. There isn't anything to show why his labor was terminated on August 19. There is a copy of his resignation here. It doesn't state why. That is all the employment shown at Mare Island. It is necessary for a physical examination to be made on employment. I have a copy of the examination. This first examination was July 14 and the second one a year later, June 20, 1920, made by Dr. Finnegan. You may have these photostatic copies. I will keep the originals here. [58]

Cross-examination
by Mr. McNab.

The fact that he was employed under a rating of riveter does not mean that he actually performed work as a riveter. We had a great many men employed at Mare Island at that time, some we used as clerks and some at light work.

Q. He was merely rated for the purpose of salaries; he may have performed clerical duties.

A. I have no way of telling.

The resignation reads as follows: "Sidney Burleyson. To the Supply Officer, Mare Island. Resignation. I do hereby tender my resignation to become effective at the expiration of my leave of absence, July 22 to August 24, 1920. Respectfully. (Signed) Sidney Burleyson," and that was accepted by the supply officer.

TESTIMONY OF DR. CHARLES RAGLE,

called on behalf of defendant and sworn.

(By Mr. Wollenberg.)

I am a physician with the Navy Department and in July, 1919, I was with the Navy Department at Mare Island. That is my signature on this report. I made an examination of Sidney Burleyson. That was the usual examination prerequisite to civil service employment. I gave him the routine physical examination. I have no independent recollection of this man. I recognize my signature on this examination and I know that the examination is in my handwriting. I made an examination of his feet at that time. He had a moderate amount of flat feet. The examination of the feet consisted of stepping on a white blotter and getting the imprint of the feet on a dry surface and then examining him for the condition of the arches to see whether they had fallen and were lower than normal. I did that in this case and found a moderate amount of flat feet, about one-half [59] drop in the arches (Testimony of Dr. George J. McChesney.)

at the time, about one-half an inch drop at that time. I don't remember whether I examined the skin. There was no evidence of gout. That would necessitate an examination of the joints of the feet. He was put through exercises lifting weights and all of those exercises were passed satisfactorily. I can tell from my examination record that he did

(Testimony of Dr. Charles Ragle.)

these things satisfactorily and if there was any deviation from the normal, this examination record would show it. My replies are true from this examination. I found that the applicant had one-half inch flat feet. I required him at that time to raise himself on his toes. At the time I made my examination, July 14, 1919, Sidney Burleyson was not permanently and totally disabled under the definition as follows: "Total disability shall be deemed to be any impairment of mind or body which renders it impossible for the disabled person to follow continuously any substantially gainful occupation, and that condition shall be deemed permanent whenever it is founded upon conditions which render it reasonably certain that it will continue throughout the life of the person suffering from it."

(Examination report received in evidence and marked Defendant's Exhibit No. 1.)

I do not know nor do I recall the plaintiff in this case.

Cross-examination

by Mr. McNab.

I have no recollection incident to the examination of this plaintiff. I was examining on the average of two thousand men a month, and that was working six days a week, something like one hundred men a day. The examinations were pretty thorough. I would say one-half an hour was taken

(Testimony of Dr. Charles Ragle.)

in the examination. Of course I had assistants. We ran them through in groups for the exercises. We stripped them in groups and put them in a room and examined them in flocks. [60] I had two assistants. I called out the answers to be written in the blanks and I read all of the blanks afterwards. This particular blank of Sidney Burleyson is filled out in another handwriting but I called out the answers to be written in. I have no recollection whatever of having seen Sidney Burleyson before and the incident doesn't exist in my mind or whether I put five or fifty minutes on him, I do not recall.

TESTIMONY OF

DR. GEORGE J. McCHESNEY,

called on behalf of defendant and sworn.

(By Mr. Wollenberg.)

I am a physician and surgeon licensed to practice in this city. I have been practicing my profession over thirty years and I am a graduate of the University of California. My specialty at present is orthopedics, specialty of the bones and joints and their deformities. I am doing certain work for the United States Veterans Bureau as a consultant and I was doing that work in the year 1928. As such I twice examined Sidney T. Burleyson. I have

(Testimony of Dr. George J. McChesney.)

before me the examination report and results of my examination, one on March 7, 1928, and on October 5, 1928. Those are the only two. There is also one of February 8, 1929. The examination of March 7, 1928, took place in my office at the request of the Veterans Bureau. I was requested to examine his feet. I found he had a moderate severe pes planus or flat feet, with a supplemented skin disease in the nature, as far as I could determine, of dermatitis. I had him do certain exercises with his feet to determine their flexibility and function and strength, etc. I had him rise on his toes, which I found he could do fifty per cent normal. He could rock back on his heels and supinate his feet, or invert his feet, that is, stand on the outer edges of them, fifty per cent normal, which indicated that the flexibility of his ankle and tarsal joint [61] was fifty per cent normal or more, and that the strength of the muscles controlling his feet was also fifty per cent normal. The dermatitis I have mentioned was a chronic dermatitis on the top of the first three toes on the left, and the first two toes on the right. He had to use an ointment and dressing. It looked like ordinary dermatitis. I am not a qualified skin specialist but it looked to me like what is known as athlete's feet. There were no open ulcers. There was some discharge but not a serious discharge, not more than a skin discharge. It did not appear to be a gangrene stage. I had no

(Testimony of Dr. George J. McChesney.)

special recommendation to make for the skin condition other than to continue with the ointment and dressing. I rendered an opinion in connection with the case to the Veterans Bureau. I prescribed alteration in his shoes and certain exercises for his muscles and ligaments, that is all. My next examination was October 5, 1928. That took place in Palo Alto. He was a patient at the diagnostic center at Palo Alto. I found nothing changed so far as his feet were concerned. I tested for circulation of the feet and found no serious interference with the circulation. The physician could have felt the pulse. I felt a pulse in his feet at that time. The vessels were normal. The pulse was normal as I took it at that time. I found that his muscle tone was poor as he wasn't using his muscles and it was my opinion that the exercise and treatment previously recommended would help his muscles and help his condition generally, and hence improve the skin condition, which was still bothering him. My last examination was February 28, 1929. I found on that occasion that the eczema was apparently cured. He was wearing plaster splints to invert the feet and correct the position of the flat feet. He had soreness and weakness in his arch supporting structure. I found [62] nothing changed in his feet. Given a definition of total and permanent disability as "any impairment of mind or body which renders it impossible for the disabled person

(Testimony of Dr. George J. McChesney.)

to follow continuously any substantially gainful occupation'' at the time of my first examination on March 1, 1928, I would not consider he was totally disabled at that time, nor at any of my subsequent examinations did I consider him totally disabled.

Cross-examination

by Mr. McNab.

I considered that he had weak feet and they were to a certain extent painful. He was incapacitated for work that would require him to be on his feet all day or do much walking; work that wouldn't require him to be on his feet but part of the time he could do. Any clerical occupation, as far as his feet were concerned he could do. I mean that his feet wouldn't prevent him from accepting a clerical occupation if he were sufficiently qualified mentally to take care of that position. I don't know anything about his mental equipment. I am merely stating that if he were equipped for a particular clerical position which would keep him off his feet, he could occupy that kind of a position. He would have to be off his feet I estimate approximately half of the time. I only know about his trouble with his feet. I made no examination into his qualification to occupy clerical positions. I have diagnosed cases of thrombo angiitis obliterans. I have seen fifteen or twenty of them. I do not know Dr. Kelly of Letterman Hospital. If Dr. Kelly, a surgeon at Letter-

(Testimony of Dr. George J. McChesney.)

man Hospital should have testified that he has for some time past during the period of his care of Mr. Burleyson, been a victim of thrombo angiitis obliterans, that would not affect my diagnosis in the case and it does not [63] alter my opinion. He had flat feet and a skin eruption around the toe. He had a purulent discharge, this discharge, as one sees in eczema, very mildly infectious. Infection might be obtained from contact with it. I only saw the ointment he had on his feet. I don't know who prescribed it for him. I did not diagnose the trouble with his feet as thrombo angiitis obliterans. I recommended exercise for his muscles and alteration in his shoes. The exercise that I recommended would have no influence on the disease of thrombo angiitis obliterans, or if any influence, a beneficial one. I prescribed the exercises of raising up on the toes, inverting the feet, and exercises which he could easily do while standing, that would not have a tendency to be painful. At the time I examined him, exercises could not have aggravated any disease that he had. On my last examination of him at Palo Alto Hospital, he had a plaster cast on both limbs to the knee, completely covering his feet with the exception of the toes projecting. I have no statement that I examined him with or without this plaster cast on at this last examination. I only recall what my notes indicate. I have no indication that this cast was ever cut off to relieve

(Testimony of Dr. George J. McChesney.)

spasms of pain. The condition of his feet was practically unchanged from the time of my first examination of March 7, 1928, to my final examination of 1929, it was no better.

Redirect Examination
by Mr. Wollenberg.

When I stated that this man could follow a clerical occupation, I referred to an occupation to which he was suited, and I had in mind that he had been following a clerical occupation from 1919 through to 1927, as well as being a cashier in a railroad eating house and had followed that type of occupation, that is the type that I have in mind, and he could have followed that occupation at the time of my [64] examination of him.

TESTIMONY OF P. J. MANGIN,

by stipulation, a witness called on behalf of the defendant, was read.

I am the examining physician for the Southern Pacific Railroad Company. Referring to the document which you show me, that is a photostatic copy of my signature. That is a photostatic copy of my signature. That is a copy of my signature to a copy of a report of a physical examination made by me of Sidney T. Burleyson. The date of that

(Testimony of P. J. Mangin.)

examination was July 6th, 1926. Upon that examination I found that the heart and lungs are normal. In answer to the question of whether he had been injured and hurt, the reply was negative. In answer to the question of what illness he might have had, he said he had pneumonia, measles, mumps, and appendicitis in 1920. That is the entire history of his condition at that time. He was rejected on that occasion for employment by the Southern Pacific Company. This was an inflammation of the urethral orifice. There was a discharge of the urethra; I was not able to make any positive diagnosis, so I asked him to return in a few days, which would enable me to determine whether it was a simple affair, or not. He did not return, and consequently, his application was rejected. The reason he was rejected was because he failed to return. Basing my opinion upon the record which I have just referred to, bearing in mind this definition of total and permanent, as that disability which would prevent a man from following continuously any substantially gainful occupation, there was nothing that would have prevented me from accepting him at that time.

Cross-examination
by Mr. Wright.

This examination probably consumed about fifteen minutes. I presume he was there looking for

(Testimony of P. J. Mangin.)

a job, trying to get employment. It was not [65] the purpose that he call my attention to defects or troubles. Whatever I found out in the way of troubles I found by extracting from him or by making a physical examination. I did not make any special examination of his feet. There was no examination made of his feet. It was generally restricted to his heart, lungs, the most important elements for the form of employment which our company might take him. Of course his gait was noticeable when he walked in the room, but there was nothing to call my attention to any defect in his limbs in that way. He was not looking for a job from me but that was his purpose in being examined, he was an applicant for employment by the railroad. I have never seen him since. I do not know a thing about his condition at the present time.

TESTIMONY OF GEORGE R. CARSON,

a witness on behalf of defendant, by stipulation, was read.

The photostatic copy of the report you show me, that is my signature upon it. That is a report technically called by my company "physical test record," upon the occasion of the application of Sidney T. Burleyson for employment and it indicates that I made a physical examination of him on August

(Testimony of George R. Carson.)

23rd, 1920. He was applying for a position as cashier. I made a physical examination of him at that time. I examined the sight, first, which was found normal, and then we made a physical examination; it is rather a test, a kind of an inspection, we take the pulse and then we ask him questions about his past sickness. We invariably ask "what past sicknesses have you had, or disabilities?"—so that we can record them here. You see here, he says appendicitis, and tonsils removed. There is nothing said here with reference to his feet. We ask that question, has he any present form of disability to hands, arms, feet or legs? On the question as to his feet, I don't know that he gave me the answer "No." I [66] put "No." He was present at the time and I was examining him at the time.

Cross-examination
by Mr. Wright.

He did not read that detailed document. This examination is rather an inspection, it is not an intensive examination. It required just a few minutes. It is quite different from the examination which I would accord to a patient coming to me so as to be informed as to the condition of his health. There are no blood tests or minute examinations. He was not stripped, we make a practice of raising the clothes and lowering the pants. He was there

(Testimony of George R. Carson.)

for the purpose of being inspected, because he was an applicant for some kind of employment. He was not there complaining of trouble.

Mr. WOLLENBERG.—This is

Redirect Examination.

I did not hear the definition given here of permanent total disability. Assuming this definition to total and permanent disability as a condition where a man can not follow continuously any substantially gainful occupation, in my opinion he was able to perform different duties at that time; I accepted him for the position; otherwise I would not have accepted him. Oh, yes, he must have walked into my office.

Recross Examination

by Mr. Wright.

I never was advised that later, after being employed, he was compelled to discontinue his duties because he was unable to remain on his feet. I don't even know he was employed.

TESTIMONY OF E. E. RYDER,

a witness on behalf of defendant, was read by stipulation.

I am chief clerk, manager of dining car department, Southern Pacific Company. In that capacity I have charge of the personnel records of the employes in that department. I know Mr. Burleyson, the plaintiff in this case. I have a [67] record of his employment by the Southern Pacific Company between 1920 and 1923. He was first employed on August 25, 1920, as cashier, and retired on September 6, 1920, reemployed September 14, 1920, and granted a leave of absence on June 22nd, 1921; he was reemployed on August 16, 1922, and released on November 1st, 1922, and returned to duty on November 19, 1922, granted leave of absence February 16, 1923, returned to duty on March 8, 1923, laid off on May 20, 1923, and returned on June 3, 1923, and finally resigned on September 2, 1923. The first employment began on August 25, 1920, as cashier. That continued until June 22, 1921. The first job was about eleven days. This is a record of the Southern Pacific dining car and hotel service. It is made under my supervision. There were several different reasons given by the plaintiff for discontinuing that work; the first time he left the job was because it was a temporary position; the second time he said that the weather was too hot, and he wished to be transferred to a cooler place; the third time it was another temporary position; the next

(Testimony of E. E. Ryder.)

time he had to go to the hospital for an operation on his eye; the next time it was a temporary position. The last time was because the country was too hot, and he was tired. The records do not show the amount of salary he was paid during that entire employment. The record does indicate how many days he spent upon these different jobs. The days of service are just as I have given them, I do not have the exact days. The service is intermittent, in and out, as he moved from one place to another, and laid off, and returned to duty. The only leave of absence indicated by the record by reason of illness is the eye operation that I have given.

Cross-examination

by Mr. Wright.

I don't know anything about the causes of his laying off and leaves of [68] absence except what was reported to me. I did not talk to Mr. Burleyson himself about it, personally. As far as I know he might have laid off because of pain in his feet or because of some other trouble. I am merely testifying from an official record that was handed to me by some of my subordinates. It does not disclose an unusual number of absences and leaves of absence during employment, only once of his own accord. They were all short periods between reemployment, with one exception. I have given them to you.

(Testimony of E. E. Ryder.)

Redirect Examination
by Mr. Wollenberg.

To a considerable extent those positions in their very nature, are temporary; we move them from one point to another as they may be required.

TESTIMONY OF MISS M. GOUGH,

witness on behalf of defendant, was read by stipulation.

I am in charge of the personal records of the Emporium in this city. I have those records with me; I have the personal record of Mr. Sidney Burleyson, covering his employment during 1923 and 1924. His first employment by the Emporium was on September 21st, 1923. The Emporium requires a physical examination before they go on what we call our regular roll. Mr. Burleyson was on our regular roll. He was a clerk in our receiving room. At that time he was on at \$80 a month, but later his salary was \$85. So far as I know he worked continuously in that position. The entire extent of his employment was from September 21st, 1923, until May 16th, 1924.

Cross-Examination
by Mr. Wright.

There are no absences recorded. I don't know what hours he kept. I don't know anything about

(Testimony of Miss M. Gough.)

his physical condition when he was there. I don't know whether he was suffering or not. There would be a notation of it if he asked for leave of absence, and we [69] have not any. I am merely testifying from records in my office. They show that his employment terminated on May 16, 1924. He resigned for a better position. I don't know where he went, or what position he went to. According to him, it was a better position. I am only talking from the records. I don't know as a matter of fact that he went to any employment, but he resigned to go.

Redirect Examination
by Mr. Wollenberg.

My records show, though, that it was a better position.

TESTIMONY OF A. L. LESSMAN,

a witness on behalf of defendant, was read by stipulation.

I am director of Heald's Business College. I do not personally have charge of the attendance records of students at Heald's College, but they are kept under my supervision. I have a record of S. Burleyson. I do not know if that is the plaintiff in this case.

Mr. McNAB.—What was the period of time that you claim he was there?

(Testimony of A. L. Lessman.)

Mr. VAN DER ZEE.—January 23 to May 17, 1924.

Mr. McNAB.—He says he went to Heald's during that time.

Mr. VAN DER ZEE.—Will you just state the attendance records of S. Burleyson, the plaintiff in this case, during that time?

A. Well, he was regular in his attendance in the evening school. He missed six sessions of school all together, during that period.

Cross-examination
by Mr. Wright.

He was there from January 23 to May 17, something less than four months, he went three times a week, I am quite sure of that. He went Monday, Wednesday and Friday. In that period of something less than four months he was absent for six sessions, I don't know for what reason. I did not observe him in the [70] school room particularly. Most of our students are seated. All of their studies are conducted there, seated either on a chair or a stool.

TESTIMONY OF JOHN STEVENS,

a witness on behalf of defendant, was read by stipulation.

I am an accountant at Tahoe Tavern. I was at that position in July, 1926. I know the plaintiff, Sidney T. Burleyson; he was employed at Tahoe Tavern from June, continuously for about three months; he worked continuously and his work was entirely satisfactory. His salary was \$125 a month and found. He was what you might call a front desk clerk; by that I mean that he passed keys out, sorted mail, and gave general information at the desk. I observed him practically daily during the time of that employment; he never complained to me of any disability or pain or made any complaint about his feet.

Cross-examination

by Mr. Wright.

Dr. Guy Wallace was the house physician at the hotel there; this was in June, 1926, June to October, 1926. To my knowledge Dr. Wallace did not examine him while he was there; I don't know whether he did or not.

Mr. McNAB.—You don't know whether Dr. Wallace made a report to the government as to his feet, do you?

Mr. VAN DER ZEE.—I object to that as not proper cross-examination. There is no ruling.

(Testimony of John Stevens.)

Mr. McNAB.—Do you know whether Dr. Guy Wallace conducted an examination there with respect to his feet?

Mr. VAN DER ZEE.—The same objection.

The COURT.—The objection will be overruled.

Mr. WOLLENBERG.—In this record, and this is one of the points taken upon appeal, it was asked the witness, an accountant at Tahoe, whether he knew that a doctor made an [71] examination on the feet of this man while he was there.

The COURT.—Well, he might have been present and seen it.

Mr. WOLLENBERG.—No, made the examination, conducted the examination relative to his feet. Now the answer indicates that the——

Mr. McNAB.—You are asking him if, while he was performing the duties, that this man was under the care of the attending physician at Tahoe Tavern. We put the doctor on the stand to prove it.

Mr. WOLLENBERG.—I withdraw the objection.

Mr. WRIGHT.—Do you know whether Dr. Guy Wallace conducted an examination there with respect to his feet?

Mr. VAN DER ZEE.—The same objection.

The COURT.—The objection will be overruled.

Mr. VAN DER ZEE.—Exception.

The WITNESS.—If he had made any examination for our insurance it would have come to my

(Testimony of John Stevens.)

hands and I received no such report. I don't know whether or not Dr. Wallace made a physical examination of him. Dr. Wallace was stationed there at the hotel, and if there were any illness in the house it was his business to make examination.

Mr. McNAB.—I would like to offer in evidence from the government's files the two examinations by Dr. Wallace of this man.

Mr. VAN DER ZEE.—No. *object.*

(Two examinations of Dr. Wallace attached hereto.)

DR. GUY WALLACE'S REPORT OF PHYSICAL EXAMINATION OF PLAINTIFF.

I am a practicing physician in the State of California. After his discharge from the military service on July 10th, 1919, I examined the claimant on July 20th, 1926. His complaint at that time was pain and swelling both feet, due to fallen arches—with chronic eczema region of toes. Upon physical examination I found the following symptoms present: Marked displacement of arches. Moderate swelling of tissue around both feet and ankles. Eczema between toes with swelling. I diagnosed the injury of plaintiff as fallen arches and chronic eczema. The prognosis was bad. I do believe the claimant's disability is attributable to his military service, for the following reasons: Claimant informs me that during his service he was operated

for appendicitis and diseased tonsils. He resumed duty while in a weakened condition. Injury to feet no doubt due to marching and other duties. Claimant continued under my care until October 12th, 1926, during which time I treated him as follows: Bathing feet in hot magnesium sulphate solution. Ointment for eczema. Bandaging and so forth, and also gave instructions to patient to remain off feet as much as possible. Remarks, treatment on following days: July 20, 23, 25, August 1st, 7, 9, 18, 26, 31, September 9, 16, 24 and 30, October 8. Fifteen treatments at \$2, total \$30. Paid to me by claimant. Guy Wallace, M. D.” [73]

DR. FREDERICK KELLY,

a witness on behalf of plaintiff, recalled. (Examination by Mr. McNab.)

Pursuant to process of court I have appeared with the Letterman General Hospital records pertaining to Sidney Burleyson. It is one of the original files of the Letterman Hospital and must be returned. I have been instructed to [72] return it to the hospital when I return. It is a signed report of Dr. Mariella and reads as follows:

“June 15, 1929. Physical examination of this patient shows the following: Tonsils are out; throat in good condition. Teeth in good shape. No adenopathy; no arteriosclerosis. Thyroid negative. No

(Testimony of Dr. Frederick Kelly.)

hernia, varicocele or varicose veins. Slight atrophy right testicle following mumps in 1917. Skin clear and healthy except for a few pigmented moles. Pupils equal, regular, and react normally, no tremor, abdominal, cremasteric, and plantar reflexes normal; deep reflexes normal. Heart, lungs and abdomen negative. Blood pressure 126 over 90. Radial and brachial pulses (pulsation) is good and the hands are warm and moist. The feet are cold and the legs are cool up to the knees, more marked on the left. The feet shows a rather marked cyanosis in the dependent position, the discoloration grading off to the mid leg; upon elevation of the leg pallor is noted about one and one-half minutes. Posterior tibial pulse is present, but definitely weak, bilateral. The dorsalis pedis pulse is absent bilaterally. There is a third degree flat feet bilateral. No atrophic changes are noted at this time. There is no history of a previous phlebitis. Slight oedema of the feet and ankles is present and there is a history of such oedema for several years back. This patient has had pain in his feet and ankles for the past eight or ten years. This has been attributed to the marked pes planus, but it wasn't until some time later that the symptoms of circulatory disturbance became noticeable; actually he dates the coldness and color changes of the feet and legs back to a little over a year ago. He has never noted caludication, but has been on his feet very little for the

(Testimony of Dr. Frederick Kelly.)

past two years. He states that there is a dull ache present at times in the [74] legs, but nothing severe. Has never used tobacco excessively, but still continues to use it moderately in spite of advice to the contrary. I saw this patient about the middle of April, 1929, and at that time diagnosed him as a case of thrombo angiitis obliterans; I am still of the same opinion. He has been in hospitals now for two and a half months and has received all the usual procedure for Buerger's disease (contrast baths, postural exercises, rest, typhoid vaccine intravenously, physio-therapy, protection of the extremities from cold, and so forth). Only slight improvement has resulted. He is desirous of leaving the hospital for a time and states that he can continue the contrast baths and exercises at his home. Under the circumstances would recommend his discharge as a hospital maximum, hospital benefit case, with the understanding that he is to report to some hospital later for continuation of the other forms of treatment. No treatment for the pes planus is indicated at this time in view of the circulatory disturbance. All foci of infection present have been removed. I N. Mariella."

Now that is over the signature of I. N. Mariella, Major Medical Corps.

Major Mariella is at present, I believe, Chief of the general medical section at Walter Reed General Hospital, Washington, D. C. He ranks very

(Testimony of Dr. Frederick Kelly.)

highly as a surgeon. He is one of the best internists in the medical corps of the army. The report says that the posterial tibial pulse is present but definitely weak bilaterally. That is on both sides. Cyanosis is reddish blue discoloration. It states in the history that the pain dated back eight or ten years. Third degree flat feet are the most extreme form of flat feet, the last degree. Mr. Burleyson's foot at the present time, in the position it is in now is reddish blue. It does not indicate a high temperature. It is chilly and cold. (Mr. [75] Burleyson takes his stocking off.) When it is touched it is cold and is due to impaired circulation.

Mr. McNAB.—Might I ask, if your Honor please, that the jury, or certain members of it, be given an opportunity to touch the foot?

The COURT.—Well, I wouldn't direct the jury to do that.

Mr. McNAB.—No.

The COURT.—But if they wish, I have no objection to any juror trying the experiment.

Mr. McNAB.—It is so difficult to describe, that I request that the jury might do so.

The COURT.—If any juror desires to touch the foot he may, for the purpose of satisfying himself as to the temperature of the foot.

It is practically like touching a block of ice. The chilled exterior is due to impaired circulation. I have never tested for sensory nerve sensation. The

(Testimony of Dr. Frederick Kelly.)

pain has not become less because of the impaired circulation. It is still there. I do not believe that the exercise of rising on the toes would alleviate or assist the condition diagnosed as thrombo angiitis obliterans.

Cross-examination
by Mr. Wollenberg.

I am talking about the condition that I am familiar with as having existed for the last seven weeks and at the present time. The examination report of the history taken by Dr. Mariella at the Letterman Hospital indicates that the pain in the feet and ankles and the discoloration of the feet is more severe for the last year. This statement is as follows: "Actually he dates the coldness and color changes of the feet and legs back to a little over a year ago." [76] That bears the date of June 15, 1929. The color changes are marked reddish and blue discolorations in the leg when the leg is in a depending condition, when they are hanging down, and there is a marked pallor when they are elevated at right angles to the body.

Mr. McNAB.—We were reading testimony of the witness from Tahoe Tavern. At that time I called upon the government to produce, if they had, a report of the examination of the physician at the Tahoe Tavern. That report has now been produced from the United States Attorney's files. This is in connection with the witness' examination from

(Testimony of Dr. Frederick Kelly.)

Tahoe Tavern: "In the Compensation Claim No. 1,392,654, of Sidney T. Burleyson, personally appeared Dr. Guy Wallace of Tahoe Tavern, Lake Tahoe, California, who, being duly sworn, states: I am a practicing physician in the State of California. After his discharge from the military service on July 10th, 1919, I examined the claimant on July 20th, 1926. His complaint at that time was pain and swelling both feet, due to fallen arches—with chronic eczema region of toes. Upon physical examination I found the following symptoms present: marked displacement of arches. Moderate swelling of tissue around both feet and ankles. Eczema between toes with swelling. I diagnosed the injury of plaintiff as fallen arches and chronic eczema. The prognosis was bad. I do believe the claimant's disability is attributable to his military service, for the following reasons: claimant informs me that during his service he was operated for appendicitis and diseased tonsils. He resumed duty while in a weakened condition. Injury to feet no doubt due to marching and other duties. Claimant continued under my care until October 12th, 1926, during which time I treated him as follows: bathing feet in hot magnesium sulphate solution. Ointment for [77] eczema. Bandaging and so forth, and also gave instructions to patient to remain off feet as much as possible. Remarks, treatment on following days: July 20, 23, 25, August 1st, 7, 9, 18, 26, 31, September 9, 16, 24 and 30, October 8.

(Testimony of Dr. Frederick Kelly.)

Fifteen treatments at \$2, total \$30. Paid to me by claimant. Guy Wallace, M. D.

“State of California, City and County of San Francisco.—ss. Subscribed and sworn to before me this 16th day of March, A. D. 1927. Mark E. Levy, Notary Public in and for the City and County of San Francisco, State of California.”

TESTIMONY OF F. PARRY,

witness on behalf of defendant, was read by stipulation.

I am the auditor of the Whitcomb Hotel and in that capacity I have charge of the personnel records of the employes. I have the record of employment of Sidney T. Burleyson; his first employment was October 20, 1926, as front clerk. He ended that employment on December 5, 1926. Our records show no reason given for the termination of that employment.

Cross-examination

by Mr. Wright.

My records do not show whether he quit of his own accord or not. My superior of Mr. Drury, one of the owners of the hotel. I never talked to him about this man's condition. I don't know that Mr. Drury was very kind to him. I know nothing whatever personally. He was there all together just about five weeks. I have no indication about the termination of his employment of his own accord.

TESTIMONY OF MRS. GEORGIA S. MILLER, witness on behalf of defendant, was read by stipulation.

I am living at the Warrington Apartments. In 1927 I had charge of the Worth Hotel in San Francisco, and at that time I employed the plaintiff in this case, Sidney T. [78] Burleyson, as a night clerk at \$125.00 a month. I have the records with me of the hotel showing the period of his employment. Referring to the records, he went to work, I think, about the 3rd of April. I have it down here the 3rd of April, 1927. He continued that employment until August 15, 1928. When he came to work there I interviewed him personally. He made no complaint about the condition of his feet. I never heard him complain about his feet, but about the 1st of January, 1928, he complained of ill health, but I don't remember that he ever told me that it was his feet. He did his work satisfactorily. I think there were one or two occasions when he was away for a few days. He worked for me for a period of over a year. He left me to go to the hospital for treatment, he told me.

Cross-examination

by Mr. Wright.

His work was night work; he came at eleven o'clock and left at seven. During that period of the night of course necessarily there are very few people coming and going. During that period there was no reason why he could not have been seated

(Testimony of Mrs. Georgia S. Miller.)

in a chair in the office. I never questioned it, because there is no reason why he could not. There was no reason for him to be around on his feet, at all. I knew of his ill health; I felt very highly of him. When he left it was to go to the Government hospital for treatment. He was not much of a man to complain. I think on two occasions he had to hire another clerk in his place on account of illness. During those occasions he hired some other clerk and went away to get relief; and there were two occasions when it was necessary for him to apply for relief and finally went to the hospital to have treatment.

TESTIMONY OF DR. EDWIN A. HOBBY,

a witness on behalf of defendant, was read by stipulation.

I am a physician connected with the United States [79] Veterans Bureau. I am doing the general surgical and orthopedic examination. Orthopedic means diseases or injuries of bones and joints. I know the plaintiff in this case, Mr. Burleyson. I have examined him at the Regional Office of the United States Veterans' Bureau, on three different occasions. The first time was December 15, 1926, when he came up for an examination on a claim for disability. I made a diagnosis at that time. He had what is commonly called flat feet. I did not

(Testimony of Dr. Edwin A. Hobby.)

give him a general examination. I examined him as to his complaint. He gave me a history of having been operated on in 1919 for appendicitis, and his tonsils, and following that operation his feet began to bother him; and soon after that he was discharged on a surgeon's certificate of disability. He said that he had complained of his feet ever since that time; he gave his history as having gonorrhoea nine months previous to my examination, and his present complaint was pain in his feet, after standing or walking much. That is all the history he gave me which pertained particularly to his feet. I found that his feet had the appearance of being congenitally broad and flat and somewhat pronated. They were not rigid, and he was able to stand on his toes with good strength. They were not swollen at that time. Bearing in mind the diagnosis of permanent and total disability with the terms of the Act which I have heard here and with which I am familiar, I would say he was not at that time totally disabled from following continuously any substantially gainful occupation. He was not permanently and totally disabled from the standpoint of following continuously a gainful occupation. There was not anything in his physical condition, from the standpoint of his feet, to prevent him from following any occupation, I do not care what. The next examination was on [80] February 27, 1928, and he gave a history at that time of having complained of his feet while in service,

(Testimony of Dr. Edwin A. Hobby.)

and having been discharged on medical survey. He said his feet began to swell in 1922, or rather, 1923, and that his toes got sore after that. His present complaint came from the arches of his feet, swelling and soreness of his toes, sometimes got sore under the anterior part of his feet, has been receiving treatment on the outside, that is, outside of the Veterans' Bureau, by private physicians probably, and in the out-patients department of the Veterans' Bureau since last May. This was May, 1927.

On examination, his feet were found to be congenitally broad and flat, and somewhat pronated. There was no swelling nor enlargement of joints. There were recent abrasions of the skin over the toes, as if from burns or blisters. There was a rather marked relaxation of the circulation of the feet, and the condition of which he complained was probably a circulatory one. The diagnosis I made at that time was, 1 Paes planus and pronatus, bilateral, second degree marked without rigidity, but marked subjective symptoms. It meant that he has very weak feet, and they are what are commonly called flat feet, but they were not of the extreme variety, intermediate, and that there had been no structural changes in the joints which makes the feet rigid and inflexible, and that he complained greatly of them. He did have some symptoms as pain and fatigue of his feet, probably pain in his legs; his feet bothered him a great deal. I also

(Testimony of Dr. Edwin A. Hobby.)

made a note, second diagnosis, circulatory disturbance in both feet, but I was unable to determine the cause at that time. I thought that it was due to having bandaged, strapped his feet a good deal, and having set up some swelling and abrasion. It had that appearance to me at that time, but I was not sure [81] of it, and I would not say. On the occasion of this second examination, he was not permanently and totally disabled within that definition which I have heard.

The third was not really an examination. He came into the office on March 26, 1929, and requested treatment, hospital treatment, and we are not obliged to make an examination for a record, except in so far as to satisfy ourselves that he is in need of hospital treatment, or that we think that hospital treatment is advisable, and we make a recommendation upon that. I simply made a note he was complaining of his feet swelling, and being stiff, and cold, and I referred to the records on file in the folder which I had before me for his condition, and especially to a report from the diagnostic center, which had just come in, I think, and I noticed that his condition was the same as reported on discharge from the hospital March 1, 1929; that is, the report from the diagnostic center was the same as the report on his discharge from the hospital, and I advised his going to the hospital for further treatment. I never advised amputation in his case; that question never came up, or entered

(Testimony of Dr. Edwin A. Hobby.)

my mind at any time that I saw him. I don't know what his condition is at the present time. I would not like to say without seeing him that his condition is one that necessitates amputation, or is likely to necessitate amputation, but with regard to the time that I saw him I would say that it was not necessary at any time when I saw him.

Cross-examination
by Mr. Wright.

The report by Major Hoy of the Medical Corps at the Presidio, and Major Marietta, which you have introduced in evidence here, in which they both diagnosed his trouble as this disease which has been described as thrombus angiitis obliterans, I neither agree nor disagree with that diagnosis, because I do not [82] know. I would not want to say without an examination. I am perfectly willing to examine him now and say. I am quite satisfied that at the time I made the two or three examinations of him, he was not a victim of that disease at that time.

I have seen quite a few cases of thrombus angiitis obliterans that have come to the Veterans' Bureau and otherwise. It does not occur with great frequency. I expect I have seen twenty or thirty cases since I have been connected with the Bureau. During that period I have had under my observation several thousand cases; I have made several thousand examinations in the last eight years for

(Testimony of Dr. Edwin A. Hobby.)

the Veterans' Bureau, and out of those several thousand I presume I have had no more than somewhere about twenty who have been afflicted with thrombus angiitis obliterans. They are a very negligible percentage of the diseases. It is a general physical disease. It is progressive as a rule. It is a circulatory disease, an infectious disease of the blood vessels, impairing the circulation of the limbs. I could not say that I have known of a case of thrombus angiitis obliterans which when once fixed in the human form, has been cured. I have seen some cases that have been so-called, that have either become arrested or where a mistake in diagnosis has been made. I don't think that quiet, relaxation, and relief from pressure of the limbs would make any difference in the arresting of the disease. I can not name a single case in my entire experience where any victim of that disease improved, or was cured while continuing physical or other labor, nor any other way. I do not think it would make any difference if a man with thrombus angiitis obliterans went out here and worked with a pick and shovel.

After my examination I referred him to the Letterman Hospital for treatment. I do not remember anything about [83] my asking him what was the matter with him and he said he did not know, at my examination, and my stating I really did not know what was the matter with him.

Mr. McNAB.—Didn't you ask Mr. Burleyson what he thought was the matter with him, and didn't he reply he did not know?

(Testimony of Dr. Edwin A. Hobby.)

A. Not that I know of.

Mr. WRIGHT.—Q. Didn't Mr. Burleyson ask that question of you, and didn't you tell him you did not know?

Mr. VAN DER ZEE.—Objected to as assuming something not in evidence, not proper cross-examination.

Mr. WRIGHT.—I am asking him on cross-examination, testing his qualifications.

The COURT.—The objection will be overruled, and an exception.

The WITNESS.—A. I have no recollection of Mr. Burleyson asking me any such question, and I have no recollection that he did ask me such a question, or any reply that I made to him.

I don't know that I saw Mr. Burleyson before March 27, 1928; I saw him on March 26, 1929, on February 27, 1928, and December 15, 1926. Referring to February 27, 1928, I have no recollection of any conversation with him; I must have had some conversation, because I got his complaint at that time, and I put down all the complaint that he made; I do not recall recommending to him that he should go to Letterman Hospital. February 27, 1928, I made an examination for compensation purposes, only, and the question did not come up as to hospitalization. I would say that I did not make any such statement as that to him.

DR. ELOESSER,

a witness on behalf of defendant, testified as follows:

Examination
by Mr. Wollenberg.

I am a physician and surgeon licensed to practice [84] and practicing in this city. I have been practicing since 1909. I am a graduate of Heidelberg Medical School. I have worked at various places. I am connected with Stanford University at present. I made an examination of Sidney Burreyson, the plaintiff in this case, on October 19, 1928. I did not make any diagnosis of thromboangiitis obliterans at that time. I took the pulse of his feet. I found a good pulse in both arteries of both feet. The symptoms of thromboangiitis obliterans that I would expect to find, if it existed, would be pain in the feet, usually increased by walking; usually increased by changes in temperature, such as heat; at times there would be blueness or pallor of the feet and absence of pulse in arteries in feet. The symptoms are suggestive of the man's pulse, they might have pointed to thromboangiitis obliterans. All of those subjective complaints might have induced one to suspect such a disease but all the objective evidence was lacking. The complaint of the man himself might have suggested the disease but not the things that I could see for myself. The objective evidence, that is, what I myself might see, was lacking. I made a thorough physical ex-

(Testimony of Dr. Eloesser.)

amination of the man from head to feet, palpated his various blood vessels and took his blood pressure. Given the definition of permanent and total disability as "any impairment of mind or body which renders it impossible for a disabled person to follow continuously any substantially gainful occupation," and bearing in mind that it is reasonably certain that it will continue throughout the lifetime of the person suffering from it, and that then it is deemed permanent, with that definition in mind at the time of my examination I think he was probably not totally and permanently disabled. [85]

Cross-examination

by Mr. McNab.

My answer is that he was probably not totally and permanently disabled. I doubt that he could possibly have been so. There is a doubt in my mind. There was no circulatory impairment in his feet to any degree. They were discolored. I contribute that to a congestion of the veins. That is to a certain extent an impairment of circulation. There was something wrong with the man. I thought the man had arthritis in his feet. That is a chronic inflammation of the joints of the feet. Arthritis would not necessarily be accompanied by severe pain. There were no characteristic symptoms of thrombo angiitis obliterans, so that this subjective complaints, although they might give rise to suspicion, would not in my mind allow one to make

(Testimony of Dr. Eloesser.)

a statement that he had the disease or not. When he came to me he said he had something definitely, of a definite nature. The evidences related to me would be consistent with the existence of thrombo angiitis obliterans but scarcely over the period of time. I examined him in 1928, which was ten years after the beginning of the symptoms, and had that man suffered from thrombo angiitis obliterans for ten years he would have shown definite objective evidence of his suffering from the disease. That disease does not take eight or ten years to develop. I agree that a patient may continue to suffer from this disease from eight to fifteen years. If the arterial circulation is sufficiently disturbed it will lead to gangrene. Ordinarily amputation is the only relief for gangrene. His feet were not normal when I examined him. I am acquainted with Major Mariella of Letterman General Hospital. I met him but he was not in charge at Letterman General Hospital. I am acquainted with his reputation as a surgeon. [86] If Dr. Mariella while in charge of this particular patient, diagnosed his trouble as thrombo angiitis obliterans, that would not tend to shake my faith in my own diagnosis, as doctors notoriously disagree, and if another doctor might have given such a diagnosis, even though of the highest repute, it would not change my opinion. There is no doubt in my mind he did not have the disease of thrombo angiitis obliterans when I examined him. I am not perfectly sure of what he

(Testimony of Dr. Eloesser.)

had but I am sure of what he did not have. I do not think that he had a very marked circulatory disease of his feet. The temperature of his feet was rather cold. I did not take the degree. I would not say that they were icy. There is a certain feeble pulse present in one or more of the vessels in quite a large number of cases in thrombo angiitis obliterans. Medical authorities do express the view that pulse is present in as high as fifty percent, but not to the finger and it would be a quarrel among surgeons as to just what disease of the feet this man had.

Redirect Examination
by Mr. Wollenberg.

I think that he could have followed any vocation providing he didn't have to be on his feet too much. I think he could stand on his feet fifty per cent of the time. I think he could follow a position where he could remain seated, as clerk or stenographer.

Recross Examination
by Mr. McNab.

I think that he could have followed a sitting occupation, such as watch maker, stenographer, clerk or something of that kind, that is, assuming he had the necessary training and ability to do it. He should be sitting while doing it. [87]

TESTIMONY OF DR. JOSEPH S. HART,

a witness called on behalf of defendant, was read by stipulation.

I am employed by the United States Veterans' Bureau as a physician; I have been with the Veterans' Bureau since the 21st of February, 1924. I am a general practitioner. I made one examination of Sidney T. Burleyson, the plaintiff in this case. I have a record of my examination. May I use it? I examined him on February 27, 1928. I made a diagnosis at that time. Mr. Burleyson gave me a medical history of the case at that time. I have that history scattered through the examination. I also have it in answer to the details of claimant's disability since his service, and his present complaint. It is quite lengthy. Claimant's statement, only hospitalization since discharged from service was Southern Pacific Hospital, San Francisco, California, for operation on my eye, right, about February, 1923, operated for cataract on my right eye, remained in hospital for eye for six weeks. About three months after discharge from service to work as storeman, Mare Island Navy Yard, under civil service appointment; remained there for about one year, then to work for Southern Pacific Railroad Company as cashier in Dining-car, Hotel and Restaurant Department, for five or six months—I beg your pardon—for nine months; then did nothing much for five or six months, then to Del Monte Hotel, in storeroom, for three months,

(Testimony of Dr. Joseph S. Hart.)

then back after about two and a half months to Southern Pacific Railroad Company, dining service, with lay-off several times until September 3, 1923, when he quit; after two months to work as assistant clerk for the Emporium, San Francisco, until March, 1924, then to Fox Hotel, as hotel clerk, at Taft, California, for about eighteen months; about June 15, 1926; then laid off until July 25, 1926, when to work at Lake Tahoe as hotel [88] clerk, until October 1, 1926, when season closed. Then about November 1, 1926, to Whitcomb Hotel, San Francisco, for one month, then laid off until about 8th of January, 1927, when to work at Granada Hotel, San Francisco, as night clerk, until about the 18th day of February, 1927, then laid off until about the 2d of April, 1927, then to Worth Hotel as night clerk, and have been employed there ever since—still employed as night clerk at Hotel Worth, San Francisco; no accident nor sickness since discharge from service. In the body of my report there is reference to some other sickness in between, which it not give at this time.

Present complaint: It's my arches, and also a breaking out on my toes—arches are broke clear down; its the pain right under here, in the arches, both feet the same, right, directly under the ankle, right straight down, you might say; on the toes, as my feet swell, whenever stand on them for any length of time, its eczema. The eczema has been since some time about 1923, last part of 1923. That's

(Testimony of Dr. Joseph S. Hart.)

only ailment that I have, just my feet. Then follows the report of physical examination—shall I read that?

On physical examination, I have the following record: Fairly erect, well developed generally, very muscular arms, more than well nourished. Color appears to be excellent; but full blood report, including blood sugar determination will be attached when received. Skin not remarkable; has an old well-healed appendectomy scar, three-quarters inch diameter, superficial scar in the side, upper, one-third left leg; except that over great toe and next toe left foot, and over second and third toes right foot are two small areas of what appear to be recent abrasions, at edge of area on toe left, next great toe is some of the superficial layer of skin which looks like there had been a definite blister here which [89] had probably been chafed open. I do not find anything here on which to say eczema; these areas look to me like abrasions rather than skin disease. Claimant has tight bandage two and half or three inches around waist of each foot. He says that the bandages are because of fallen arches. He says the only skin involvement is on the toes; the areas of recent abrasions are small and all on the dorsal surface, none elsewhere. I am not requesting claimant to remove the bandages mentioned above in view of his story, and in view of the fact that his feet will be later examined and reported upon today by orthopedist; from what I see, especially

(Testimony of Dr. Joseph S. Hart.)

in view of practically no pronation being present, and weight of individual, I am inclined to consider as probably congenital low arch feet rather than broken arches; but as I have not taken bands off, see orthopedist report of condition. Throat somewhat hyperemic, tonsils appear to have been removed. Teeth fair condition, some repair, will be referred to dentist. Tongue not remarkable, very slightly coated. Lungs apparently perfectly normal, no abnormalities detected by me, but because of general order will be referred to T. B. specialist for his examination, his report will be on page 3. Heart action is of good strength, regular, no abnormal sounds or other abnormalities detected; no thrill. A. C. D. appears to be within normal limits. When sent to X-ray for chest, heart will also be included, so see X-ray for definite measurements. Claimant cannot exercise by jumping because of feet; he was, therefore, requested to exercise by stooping, hands above head to the floor, fifty times; this he did, and immediately after the heart rate was 96 G. S. R.; there was no evidence of nor any complaint of any distress, no cyanosis, no dyspnea, no abnormalities of any kind detected, either when upright or recumbent. After exercising one minute heart rate 78 G. S. R.; [90] after one and a half minutes rate is at pre-exercise rate of 72. Abdomen soft, very considerable fat, no masses made out, no distention, no tympanitis, no rumbling, no tenderness nor sensitiveness from palpation, no spasm, no

(Testimony of Dr. Joseph S. Hart.)

rigidity; there is an old, well-healed surgical scar (Appendectomy 1919), no hernia, no hemorrhoids.

Genitalia; there is a well-defined scar, old, on fraenum; the left testicle is also somewhat larger than right, and the left epididymus is somewhat indurated; claimant admits gonorrhoea lasting about three months in 1926; denies ever any other venereal disease. Extremities, see orthopedic report; from my examination slight abrasions tops of two toes each foot; apparently comparatively recent; no eczema found; possibly congenital flat feet. Claimant is wearing tight bandages around waist of both feet; there is practically no pronation here. Nervous system, referred to N. P. examination. No Romberg. No tremors. Pupils round, equal, react to L. not tried for D. None equal. Right is apparently definitely hyperactive; *tende* Achilles apparently right is a little more active than left. Superficial glands not remarkable. No edema, no ascites, no jaundice. At the time of my examination, it is my opinion that the plaintiff was able to follow continuously any substantially gainful occupation; as far as I could see any number of occupations.

Cross-examination.

Mr. WRIGHT.—I found no reason why he should not take any of any number of occupations, running an elevator. From what there is here, yes, I would be willing to ride from the top of the Russ

(Testimony of Dr. Joseph S. Hart.)

Building with him, in his condition, operating the elevator and standing on his feet. I could not say definitely how long that examination took; I should imagine it probably took up a matter of at least an hour. I do not recall seeing him before, nor [91] so far as I am aware have I ever seen him since. My entire knowledge of his condition is based upon this one examination and what I have heard in the courtroom of his condition. I never at any time saw him perform or attempt to perform any kind of labor. I am simply gaging it on my examination during this period of time. I have no way of knowing that if he were to stand upon his feet and engage in some physical exercise for six hours his feet would swell and become painful so that he could not any longer stand on his feet. On the basis of what I found, and from what I have heard at this particular time, I am stating that I do not see any reason why he should not keep on his feet; there is nothing to believe contrary to the evidence; that he was available for almost any work. I am not an orthopedist. I referred him to an orthopedist for an examination of his feet. I did not make any examination of the joints of his feet. I did not even take the bandages off his feet. I did not make an examination of the joints of his feet, because the Government has men who are specialists along those certain lines. We have specialists available, and we refer every case to specialists. I saw this man from the general medical examiner's standpoint, and not

(Testimony of Dr. Joseph S. Hart.)

a specialist. I do not pretend to be an orthopedist, skilled in the examination of the feet. I sent him to the orthopedist because of the fact that his claim involved the arches. As there are arch specialists there, it is not my function to do that. I do not pretend to be an arch specialist. I made no attempt to make the orthopedic specialist's examination. I was considering the whole body, and referred him to the specialist for that. I did not ask him to remove the bandages from his feet, because I referred him to the orthopedist. The nature and extent of the falling and breaking of the arches, I make an entry that there is practically [92] no pronation here. I did not conduct any examination by measurement and by scale of the pressure of his feet in that condition; I made no attempt to. I tried to go through the general examination of heart and lungs, and skin, as a general practitioner would. He came complaining about his feet. I made an examination of his heart. I did not find it here that he complained of his lungs. I made no examination of his feet but I made an examination of his lungs. I went over his body and found that he had had a cataract removed, had an operation for appendicitis, and had an operation for the removal of the tonsils, but he did not complain of any of those things, but the government sent him to a general medical examiner for examination, and for the specialist's examination in addition. I referred him

(Testimony of Dr. Joseph S. Hart.)

to somebody else for his feet, because it is not my function to examine him for that.

He came to me complaining of the condition of his feet, and I made such an examination as that I have referred to. I did not attempt to diagnose the trouble in his feet except as to some abrasions and as to the skin condition. There has been something there on the surface of the toe some abrasion. He came to me with a complaint concerning his feet and I referred him to somebody that was thought to be a specialist qualified to pass on that subject. There are very few who are familiar with the disease known to the medical profession as thrombus angiitis obliterans. I am not familiar with its treatment. I did not make any such diagnosis. I am not qualified to make a diagnosis of that disease as a specialist, and I am not a specialist. I examined his feet enough to arrive at the conclusion that he could perform satisfactorily in a great number of occupations. I pointed out the fact that the condition of the skin was due to the right bandaging. I do not believe I asked him whether these [93] bandages were being applied under the direction of a surgeon, I don't know, I could not say.

Redirect Examination.

MR. WOLLENBERG.—As a general practitioner I was able to observe the condition of his feet, although as a matter of precaution I recommended an examination by a specialist on feet.

(Testimony of Dr. Joseph S. Hart.)

I absolutely disagree with the application of bandages around the feet. I don't know who applied them and that would make no difference, whatever.

Mr. WOLLENBERG.—At this time, your Honor, the government rests.

Mr. McNAB.—The plaintiff rests.

Mr. WOLLENBERG.—Then at this time I move this court for a directed verdict upon the ground that the plaintiff has failed to sustain the burden of proof with reference to the allegations of the complaint that he was totally and permanently disabled at the time this policy was in force, to-wit, in February of 1920; and that the evidence rather shows that he worked over a period of time of seven or eight years continuously at a substantially gainful occupation, and I move your Honor for a directed verdict on those grounds.

The COURT. I think the case is one that should go to the jury. I will deny the motion.

Mr. WOLLENBERG.—Exception.

Thereupon the jury retired and returned a verdict for plaintiff and fixed the date of permanent and total disability as of July 10, 1919.

Dated, November 9, 1932.

JOHN L. McNAB,

S. C. WRIGHT,

Attorneys for Plaintiff.

GEO. J. HATFIELD,

Attorney for Defendant. [94]

STIPULATION.

It is hereby stipulated by and between the above-entitled parties and their respective counsel that the foregoing bill of exceptions is true and correct, and that the same may be settled and allowed by the above-entitled court and made a part of the record in this case.

GEO. J. HATFIELD,
Attorney for Defendant,
JOHN L. McNAB,
S. C. WRIGHT,
Attorneys for Plaintiff.

ORDER APPROVING AND SETTLING
BILL OF EXCEPTIONS.

The foregoing bill of exceptions is duly proposed and agreed upon by counsel for the respective parties, is correct in all respects, and is hereby approved, allowed and settled and made a part of their record herein, and said bill of exceptions may be used by either parties plaintiff or defendant, upon any appeal taken by either parties plaintiff or defendant.

Dated:

HAROLD LOUDERBACK,
United States District Judge. [95]

VETERANS ADMINISTRATION

United States Veterans Bureau
Washington

[Veterans Administration 1930 Seal]

Office of
The Special Counsel on
Insurance Claims

Jul. 10, 1931.

This Letter Refers to
Your File Number:
In Reply Refer to: L-28
C-1,392,654
Sidney T. Burleyson
vs.
United States

Mr. Sidney T. Burleyson,
Hotel Worth,
641 Post Street,
San Francisco, California

Dear Sir:

Acknowledgment is made of the receipt of your letter of June 16, 1931 requesting that you be advised as to the Administrator's decision with reference to a claim for insurance benefits which was filed January 11, 1931.

On June 11, 1931 the Administrator determined that the evidence in your case does not disclose that prior to the lapse of War Risk Term Insurance that you were suffering from any disability which

rendered you unable continuously to pursue a substantially gainful occupation. The action of the Director which was complained of and appealed from was therefore affirmed.

By direction,

Wm. Wolff Smith,
William Wolff Smith,
Special Counsel.

United States District Court

No. 19,029-L

Burleyson v. U. S.

Pltf. Exhibit No. 1

Filed 2/2/32

WALTER B. MALING,
Clerk,

By HARRY G. FOUTS,
Deputy Clerk. [96]

N. M. C. 385a-A & I.

United States Marine Corps.

TO ALL WHOM IT MAY CONCERN:

Know ye, That Sidney T. Burleyson, a Private of the U. S. Marine Corps, who wasenlisted the 30th day of July, 1918, at Paris Island, S. C. to

During War

serve.....years, is hereby discharged Upon report of Medical Survey dated June 5, 1919 Origin

not in the line of duty, Disability is not the result of his own misconduct.

Said Sidney T. Burleyson was born January 4th, ~~18~~ 1900 t Belen, Mississippi, and whenenlisted was 66½ inches high, ith Brown eyes, Brown hair, Ruddy complexion; occupation, Salesman; citizenship U. S. Applied for enlistment at R. H. Memphis, Tenn.

Given under by hand and delivered at Mare Island, Cal. this 10th day of July, 1919.

Paid in full \$231 65/100.

R. A. Ramsey,
Lieut. Col., U. S. M. C.,
Commanding Marines.

Character: Excellent.

(over) Barracks Detachment. [97]

MILITARY RECORD.

Previous service None

Noncommissioned officer None

Marksmanship qualification Marksman. October 4th,
1918

Gun pointer No

Sea Service U. S. S. Albany, January 13-1919 to
February 23-1919

reign service Pearl Harbor T. H. February 23-1919
to June 8, 1919

peditions None

Battles, engagements, affairs, or skirmishes None
Military efficiency Good Obedience Excellent
Sobriety Excellent

Remarks: Services honest and faithful

R. A. Ramsey,
Lieut. Col., U. S. M. C.,
Commanding Marines.
Barracks Detachment. [98]

C-1392654

120 Modern Rooms Fred H. Jensen, Mgr.

HOTEL FOX

Grill and Lunch Counter

Taft, California, 1/11/25

U. S. Veterans Bureau.

Los Angeles Calif.

Dear Sir:—

I was discharged from the U. S. Marine corps at Mare Island Calif. July 10th 1919 with Phisican Certificate Of disability, and desire to file a claim for Treatment and Compensation. I signed a statement to the effect that I would not come back on the Gov't for Any compensation. This I was forced to do. Prior to this time I have been Ignorant of the fact that I am entittle to my just Claims through a bill passed some time in the Year of 1922.

Will you kindly forward in the necessary blanks with instructions for filing as soon as posible.

Hoping to hear from you some time in the near future.

I remain,

Yours truly,
 Sidney Theo Burleyson,
 Fox Hotel
 Taft Calif. [99]

[U. S. Veterans Bureau 1921 Seal]

Office of Regional Manager

UNITED STATES VETERANS BUREAU

San Francisco, Calif.

October 2, 1928

This Letter Refers to
 Your File Number:
 In Reply Refer to: 42c
 C-1 392 654

Mr. Sidney T. Burleyson,
 Herald Hotel,
 San Francisco, Calif.

Dear Sir:

We are in receipt of a letter from the Los Angeles Office of the Veterans' Bureau enclosing the letter which you addressed to that office on January 11, 1925 requesting that blanks we forwarded to you in order that you might file a final application for compensation.

We are also in receipt of a copy of the reply made by the Los Angeles Office on January 14, 1925.

-2-

1-23-19. Re-admitted with: Appendicitis, acute. Origin. Not a misconduct. Operation. Carney incision. -ther and...
 20 complications. -ther well after operation.

2-2-19. Stitches removed. Healing well.

3-12-19. Patient has hyperbrotic tubsils. Tonsillitis.

3-17-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

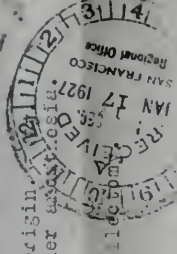
4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

FILED
P.M.L.

NYC-00155



1-23-19. Re-admitted with: Appendicitis, acute. Origin. Not a misconduct. Operation. Carney incision. -ther and...
 20 complications. -ther well after operation.

2-2-19. Stitches removed. Healing well.

3-12-19. Patient has hyperbrotic tubsils. Tonsillitis.

3-17-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

... STIFF

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

4-1-19. Discharged to duty. Well.

Physical defects noted at enlistment: Testu galgum, old injury left leg. No inconvenience.



DO NOT ADDRESS THE SIGNER OF THIS LETTER
BUT ADDRESS YOUR REPLY TO
BUREAU OF MEDICINE AND SURGERY,
NAVY DEPARTMENT, WASHINGTON, D. C.
AND REFER TO NO.

113-30150

WASHINGTON, D. C.

To: Veterans' Bureau, Washington, D. C.

Subject: Case, C- 1092654 BURLYSON Sidney Inco.

Reference: Call of 1-3-27.

In the case of the above named the records of this Bureau show as follows:-

Born: Place.....Selen, Miss..... Date..... 1-4-90.

Enlisted: Place..... Harris Island SC..... Date..... 7-30-18

Discharged: Place..... Harris Island Calif..... Date..... 7-10-19.

AB 2-11-18 ISLAND SC.

6-6-18. Malaria. Origin. Not duty. Attack prior to enlistment. b. ft. by a. Combined with. No statement. Usual treatment. Prescribes Ipana.

8-11-18. Discharged fo duty. No symptoms.

9-5-18. Anti-inoculation. typhoid. Origin. duty. Usual treatment.

9-6-18. Discharged to duty under treatment.

9-7-18. Enteritis, acute. Origin. Duty. Due to diet. Patient reported at 4:00 PM complaining of abdominal cramps and constipation for two days. No history of vomiting. No tenderness or rigidity on right side of abdomen. Transferred to-

NAVY HOSPITAL PEARL ISLAND OAHU.

9-7-18. Re-admitted with: Enteritis, acute. Origin. Duty.

9-8-18. TPN normal. Feeling better.

9-14-18. Discharged to duty. No operation. Feeling very well.

3 QUANTICO VA.

11-2-18. Influenza. Origin. duty. Usual symptoms. Transferred to-

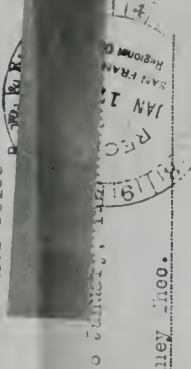
SICK QUARTERS B QUANTICO VA.

11-2-18. Re-admitted with: Influenza. Origin. Duty. Usual course on routine treatment.

11-13-18. Discharged to duty. Well.

USS ALBANY.

2-22-19. Appendicitis, acute. Origin. duty. Due to dietetic error. Diffuse cramps over abdomen. Physical examination shows tenderness at Mc Burney's point. Slight rigidity. Slight fullness. Transferred to-



REQUEST FOR MARINE CORPS INFORMATION

FOR USE OF—

DIVISION _____ SUBDIVISION _____ SECTION _____ UNIT _____

December 16, 1926

It is requested that information be given on the subject checked and this sheet returned to Record Verification Section, Claims Division, United States Veterans Bureau.

Name Burleyson, Sidney
 (Last) (First) (Middle)

Rank and organization U. S. M. C. or U. S. M. C. It U. S. M. C.

Ship or station _____

Date of enlistment 7/24/18

Home address Kern Hotel, 16, Lady St., San Francisco, Calif.

Alleged disability Broken arches

located at Pearl Harbor, U. S. Navy

Allotment No.: A.

Compensation Claim No.: C.

Converted Insurance No.: K.

Term Insurance No.: T.

Date

Date of discharge account 7/10/19

Injured at Pearl Harbor, H. S.

Hospital No.

Hospital No.

Hospital No.

Hospital No.

By ALLAN CARTER Chief, Claims Div.,
SAN FRANCISCO REGIONAL OFFICE.

From: Paymaster, Marine Corps Headquarters, Washington, D. C.

To: Record Verification Section, Claims Division, United States Veterans Bureau.

1. Premium deductions

from _____ to _____, 19 _____ from \$ _____

2. Allotment deductions for Class A and for Class B

from _____ to _____, 19 _____ from \$ _____

3. Certified copies of Forms 1-B

from _____ to _____, 19 _____ from \$ _____

4. Date of return to pay status

from _____ to _____, 19 _____ from \$ _____

5. Insurance increased to \$ _____ from \$ _____

on _____ to _____, 19 _____ from \$ _____

From: Major General Commandant, Marine Corps Headquarters, Washington, D. C.

To: Record Verification Section, Claims Division, United States Veterans Bureau.

12. Name in full and rank BURLEYSON, Sidney

There _____ P. M.

13. Date and place of birth 1-4-20, Belen, Miss.

14. Dates and places of enlistments or appointments

7-22-18, Parris Island, S. C.

15. Age at enlistment or appointment _____

16. Date of desertion _____

17. Date of apprehension _____

18. Date, cause, nature, and place of discharge 7-10-19

Mare Island, Cal. Hon. Char.

Excellent, Medical Survey.

19. Changes in rank prior to July 1, 1918 PAY WAR

OCCUPATION: SALESMAN

20. On active service Nov. 1, 1917 _____

Prewar Occupation: _____

11. Has final settlement been made? _____

By _____

January 6, 1927

VIA: EMS

21. Date of death, cause, and line of duty status

22. Disability in line of duty _____

23. Disability result of willful misconduct _____

24. Emergency address Temple Burleyson, (M)

Belen, Miss.

25. Future address SAME

26. Present location and rank _____

27. Date of indefinite furlough _____

By Major, A. A. A. I. U. S. V. C.

M. R. Thacher,

SALESMAN

(SEE REVERSE SIDE)

9-974

Full instructions regarding the filing of the claim were given in that letter.

Your letter of January 11, 1925 cannot be considered a sufficient application for compensation because you did not make any answer to the letter written by the Los Angeles Office on January 14, 1925, and you did not file your formal application for compensation until December 14, 1926.

By direction,

ALLAN CARTER

Regional Adjudication Officer,
San Francisco, Calif.

United States District Court

No. 19029-L

Burleyson v. U. S.

Pltf. Exhibit No. 4

Filed 2/2/32,

WALTER B. MALING, Clerk.

By HARRY T. FOUTS, Deputy Clerk. [100]

(Photostats of pages 101-102-103 opposite.)

[Endorsed]: Filed Nov. 21, 1932. [104]

[Title of Court and Cause.]

PETITION FOR APPEAL AND ASSIGNMENT
OF ERRORS.

The United States of America, defendant in the above-entitled action, by and through Geo. J. Hat-

field, United States Attorney for the Northern District of California, feeling itself aggrieved by the judgment entered on the 4th day of February, 1932, in the above-entitled proceedings, does hereby appeal from the said judgment to the Circuit Court of Appeals for the Ninth Circuit.

And in connection with its petition for appeal therein and the allowance of the same, assigns the following errors which it avers occurred at the trial of said cause and which were duly excepted to by it and upon which it relies to reverse the judgment therein:

I.

The District Court erred in denying defendant's motion for a directed verdict made at the close of all the evidence of the said cause upon the following grounds, to-wit:

(1) On the ground that the evidence in this case had not established a prima facie case for the plaintiff and was legally insufficient to sustain a verdict.
[105]

(2) On the ground that the evidence in this case proves conclusively that the allegations of the plaintiff's complaint have not been established, in that plaintiff has been shown to have had continuous employment since the date of the lapse of his policy and in that there is no evidence whatsoever in the record that any condition of permanent and total disability existed during the period from the time of the lapse of plaintiff's policy up to the year

1926, and as to the period from 1926 to the date of trial, the evidence shows a partial disability.

II.

The District Court erred in entering judgment on the verdict herein when the evidence adduced at the trial of this action was insufficient to sustain the verdict or judgment.

WHEREFORE defendant prays that its appeal be allowed, that a transcript of the record of proceedings and papers upon which said judgment was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, that this assignment of errors be made a part of the record in its cause, and that upon hearing of its appeal the errors complained of be corrected and the said judgment of February 4, 1932, may be reversed, annulled and held for naught; and further that it may be adjudged and decreed that the said defendant and appellant have the relief prayed for in its answer and such other relief as may be proper in the premises.

GEO. J. HATFIELD,
United States Attorney,
Attorney for Defendant and Appellant.

Receipt of a copy of the within admitted this 4th day of May, 1932.

JOHN L. McNAB,
S. C. WRIGHT,
Attorneys for Plaintiff.

[Endorsed]: Filed May 4, 1932. [106]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL AND THAT NO
SUPERSEDEAS AND/OR COST BOND BE
REQUIRED.

Upon reading the petition for appeal of the defendant and appellant herein, IT IS HEREBY ORDERED that an appeal to the Circuit Court of Appeals for the Ninth Circuit from the judgment heretofore filed and entered herein be, and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to the said Circuit Court of Appeals for the Ninth Circuit.

IT IS FURTHER ORDERED that no bond on this appeal, or supersedeas bond, or bond for costs or damages shall be required to be given or filed.

Dated, May 3, 1932.

HAROLD LOUDERBACK,
United States District Judge.

[Endorsed]: Filed May 6, 1932. [107]

[Title of Court and Cause.]

STIPULATION AND ORDER FOR TRANS-
MISSION OF EXHIBITS TO CIRCUIT
COURT OF APPEALS.

IT IS HEREBY STIPULATED by and between the parties hereto that each of the exhibits introduced in evidence at the trial of the above-

entitled action be sent to the Circuit Court of Appeals for the Ninth Circuit to be used by the said Appellate Court, to be printed as part of the transcript on appeal and to be deemed part of the bill of exceptions.

Dated, October 20, 1932.

JOHN L. McNAB,

S. C. WRIGHT, R. S.,

Attorney for Plaintiff.

GEO. J. HATFIELD,

Attorney for Defendant.

It is so ordered.

HAROLD LOUDERBACK,

United States District Judge.

[Endorsed]: Filed Oct. 21, 1932. [108]

[Title of Court and Cause.]

PRAECIPE.

To the Clerk of said Court:

Sir:

Please prepare a transcript of the record in this cause to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, under the appeal heretofore sued out and perfected to said Court, and include in said transcript the following pleadings, proceedings and papers on file, to-wit:

1. Complaint.

2. Answer to complaint.
3. Petition for appeal and assignment of errors.
4. Order allowing appeal and that no super-sedeas and/or cost bond be required.
5. Citation on appeal.
6. Bill of exceptions.
7. Stipulation re sending exhibits to Circuit Court.
8. Judgment and verdict.
9. This praecipe.

GEO. J. HATFIELD,
United States Attorney,
Attorney for Defendant.

Service of the within Praecipe of Transcript of the Record by copy admitted this 30th day of November, 1932.

JOHN L. McNAB,
S. C. WRIGHT,
per R. Scott,
Attorneys for Plaintiff.

[Endorsed]: Filed Nov. 30, 1932. [109]

[Title of Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern Dis-

trict of California, do hereby certify the foregoing 109 pages, numbered from 1 to 109 inclusive, to be a full, true and correct copy of the record and proceedings as enumerated in the praecipe for record on appeal, as the same remain on file and of record in the above-entitled suit, in the office of the Clerk of said Court, and that the same constitutes the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is \$20.10; that said amount has been charged against the United States and the original Citation issued in said suit is hereto annexed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 7th day of December, A. D. 1932.

[Seal]

WALTER B. MALING, Clerk,
by B. E. O'HARA,
Deputy Clerk. [110]

CITATION.

United States of America, ss:

The President of the United States of America.
To Sidney T. Burleyson, GREETING:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden

at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California, wherein the United States of America, is appellant, and you are appellee, to show cause, if any there be, why the decree or judgment rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable Harold Louderback, United States District Judge for the Northern District of California, this 3rd day of May, A. D. 1932.

[Seal] HAROLD LOUDERBACK,
United States District Judge. [111]

Receipt of copy of the within Citation on Appeal is admitted this 7th day of May, 1932.

JOHN L. McNAB,
S. C. WRIGHT,
Attorneys for Appellee.

[Endorsed]: Filed May 7, 1932.

[Endorsed]: No. 7023. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, v. Sidney T. Burleyson, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed December 9, 1932.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

